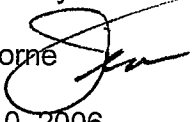




OFFICE OF
INSURANCE COMMISSIONER

M E M O R A N D U M

TO: Market Analysis Interested Parties

FROM: Jim Odiorne 

DATE: March 10, 2006

RE: Response to comments on Sections 1-4 of Z Draft

Thank you to all who provided comments. All comments, as they were received, are attached for your review. We look forward to a more complete discussion of these comments at our meeting on March 15 here in Tumwater. The following are our initial comments on some of the major issues identified in your comments.

Health carriers asked that the definition of "complaint" (Sec. 4(3)) be limited to written complaints by covered persons. Because of the sensitive nature of health care and its importance to the public, we do not believe it is proper to limit the definition to written complaints. Also, because of the statutory requirements concerning providers and provider networks, we cannot agree that complaints are limited to patient complaints as proposed.

Several comments suggested that the definition of "market analysis" (Sec. 4(6)) be limited to licensed or admitted carriers. We believe such a limitation would prevent us from investigating the activities of entities operating illegally in this state. To protect consumers and the insurers operating legally in this state, we cannot agree to the requested limitation.

Comments concerning the current definition of "targeted examination" (Sec. 4(14)) and a proposed definition of "comprehensive market conduct examination" gave me the impression that interested parties thought that "targeted" and "comprehensive" examinations covered or were limited to specific topics. From our perspective, both types of exams are tools in the continuum. Again from our perspective, the full scope and range of insurer market activity is subject to examination in either type of examination. Our concept is that "targeted" examinations will focus on fewer areas. "Comprehensive" exams may be for-cause or not-for-cause.

Though not specifically in Section 1-4 of the Z Draft, a number of comments touched on confidentiality. I was not able to identify where the Z Draft was deficient in the area of confidentiality. I would like more specific indications of where the Z Draft should be enhanced on confidentiality.

OFFICE OF INSURANCE COMMISSIONER

Also not included in Sections 1-4 of the Z Draft were comments on alternative dispute resolution and complete domestic deference. At this time, it is highly unlikely that such provisions will be included in the Commissioner's request legislation, and it is highly likely that any attempt to include those issues will be strongly resisted.

Our Z Draft is a first step. We thought it prudent not to try a total re-make of market regulations in one fell swoop. That is why we did not request funding for all the positions recommended by our consultant, and why we did not include in our Z Draft an abandonment of all current authority. We cannot abandon market regulation for the several years it will take to build the system ultimately contemplated by the consultant's report. We do expect to re-visit market regulation statutes over the next several years as we build the new system.

Jim Odiorne

From: Pelovitz, Betsy [BPelovitz@ahip.org]
Sent: Wednesday, March 08, 2006 1:19 PM
To: Jim Odiorne
Cc: Beth Berendt; sorensen@carneylaw.com
Subject: Market Analysis Comment Letters

Deputy Commissioner Odiorne-

Please accept the attached written comments, and accompanying materials, on behalf of America's Health Insurance Plans (AHIP) regarding the Office of the Insurance Commissioner's z-draft for a Market Analysis program. We are submitting comments on section 1, 2, 3, and 4 of the Z draft, as well as a separate comment letter on additional provisions that we would like to see added to the legislative proposal.

Feel free to contact me with any questions.
Thank you.
Betsy

Betsy M. Pelovitz
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Providing health benefits for over 200 million Americans.

Make plans now to attend AHIP's **2006 National Policy Forum**, March 6-9, 2006 at the Ritz-Carlton in Washington, D.C. Also, join us on Monday, March 6 at **AHIP Foundation's Innovations and Excellence Awards Dinner**, where we'll honor Senator William H. Frist, MD, Senator Charles Schumer, and the recipients of the Innovation and Excellence awards.

3/8/2006

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March 8, 2006

Deputy Commissioner James Odiorne
Washington State Office of the Insurance Commissioner
5000 Capitol Way
Tumwater, Washington 98501

Re: Market Conduct Surveillance Model Act
Sections 1 – 4 of Z draft

Dear Deputy Commissioner Odiorne:

On behalf of America's Health Insurance Plans (AHIP), we appreciate the opportunity to comment on the Office of the Insurance Commissioner's (OIC's) efforts to develop a legislative proposal for a Market Conduct Surveillance Model Act. AHIP is the national trade association representing nearly 1,300 member companies providing health insurance coverage to more than 200 million Americans.

We appreciate the OIC's efforts to adopt language that incorporates the uniform standards developed by the National Association of Insurance Commissioners (NAIC) and the National Council of Insurance Legislators (NCOIL) with respect to state market analysis and market conduct programs. Please accept this correspondence in response to your request for comments on sections 1, 2, 3 and 4 of the OIC's Z draft.

We have no comments to offer on section 1 or section 2 of the OIC's Z draft. What follows are some suggested revisions to sections 3 and 4 of the Model. The recommended changes are also incorporated into the Industry Revised Model that we provided to the OIC with our March 00, 2006 correspondence. Our suggested deletions are highlighted with ~~striketrough text~~ and our requested additions are highlighted in underlined text.

Section 3

We respectfully request the inclusion of the following language in the scope section in order to clarify that this Act is the sole vehicle for regulating market analysis and market conduct actions and examinations.

Notwithstanding any other grant of authority to the Commissioner to regulate the business of insurance in this state, market analysis, market conduct actions and market conduct examinations shall be undertaken solely as provided in this Act. Authority not expressly delegated to the commissioner under this Act shall not be inferred.

March 8, 2006

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Section 4

We request that additional language from the NAIC market regulation handbook be added to the definition of "complaint" under section 4 (3) to clarify what types of grievances qualify as a complaint against a health insurance company.

"Complaint" means a written or documented oral communication primarily expressing a grievance, meaning an expression of dissatisfaction. For health companies, a grievance is a written complaint submitted by or on behalf of a covered person.

We respectfully offer the following technical revisions to the definition of "market action" under section 4 (6) of the OIC's Z draft.

"Market action" means any of the full range of activities that the commissioner may initiate to assess and address the market practices of insurers licensed to do business in the state, beginning with market analysis and extending to examinations. The commissioner's activities to resolve an individual consumer complaint or other report of a specific instance of misconduct ~~is~~ are not market conduct actions for purposes of this chapter.

The NAIC's market analysis handbook and market conduct examiner's handbook have been combined into a single new handbook entitled the NAIC market regulation handbook. As a result, we submit that the current definitions under sections 4 (9), (10) for "NAIC market analysis handbook" and "NAIC market conduct examiner's handbook" should be combined into a single definition as follows:

"NAIC market regulation handbook" means 1) the outline of the elements and objectives of market analysis developed and adopted by the NAIC, and the process by which states can establish and implement market analysis programs, or a successor product; and 2) the set of guidelines developed and adopted by the NAIC that documents established practices to be used by market regulation personnel in developing and executing an examination, or a successor product.

It is critical that qualified contract examiners who are under contract with the commissioner be qualified by both education and experience and, where application, professional designations. We therefore submit the following suggested revisions to the definition of "qualified contract examiner" under section 4(13):

March 8, 2006

Page 3



"Qualified contract examiner" means a person under contract to the commissioner, who is qualified by education, experience, ~~or~~ and, where applicable, professional designations, to perform market ~~conduct~~ actions.

We submit the following technical revision to the definition of "targeted examination" under section 4(14). The suggested amendment clarifies the distinction between targeted and comprehensive examinations with targeted exams focusing on one or more, but not all, of the business practices and comprehensive reviews focusing on all areas.

"Targeted examination" means a focused examination, based on the results of market analysis indicating the need to review either a specific line or lines of business, or specific business practices, including but not limited to: (a) Underwriting and rating; (b) marketing and sales; (c) complaint handling; (d) operations and management; (e) advertising; (f) licensing; (g) policyholder services; (h) nonforfeitures; (i) claims handling; ~~and or~~ (j) policy forms and filings. A targeted examination may be conducted by desk examination or by an on-site examination.

Finally, we believe that it is important to include a definition for "comprehensive market conduct examinations" in order to more clearly distinguish the different types of examinations.

"Comprehensive market conduct examination" means a review of one or more lines of business of an insurer domiciled in this state that is not conducted for cause. The term includes a review of rating, tier classification, underwriting, policyholder service, claims, marketing and sales, producer licensing, complaint handling practices, or compliance procedures and policies.

Thank you for the opportunity to provide comments on this matter and we look forward to continuing to work with the OIC on this legislative proposal. Please feel free to contact us with any questions or concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "Betsy M. Pelovitz".

Betsy M. Pelovitz
Regional Director

cc: Melvin Sorenson, Carney Badley Spellman, PS

**America's Health
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March 8, 2006

Deputy Commissioner James Odiorne
Washington State Office of the Insurance Commissioner
5000 Capitol Way
Tumwater, Washington 98501

Re: Market Conduct Surveillance Model Act

Dear Deputy Commissioner James Odiorne:

On behalf of America's Health Insurance Plans (AHIP), we appreciate the opportunity to comment on the Office of the Insurance Commissioner's (OIC's) efforts to develop a legislative proposal for a Market Conduct Surveillance Model Act. AHIP is the national trade association representing nearly 1,300 member companies providing health insurance coverage to more than 200 million Americans.

We appreciate OIC's efforts to adopt language that incorporates the uniform standards developed by the National Association of Insurance Commissioners (NAIC) and the National Council of Insurance Legislators (NCOIL) with respect to state market analysis and market conduct programs. During the February 23, 2006, meeting hosted by your office, you requested interested parties to submit comments on additional provisions that we believe are critical components of an effective Market Conduct Surveillance Model. Please note that we will also be submitting comments on the current provisions of the Z draft distributed by the OIC in accordance with the schedule that you provided at the meeting. This comment letter only addresses provisions that we would like to see added to the Model.

There are additional key provisions that AHIP members believe should be added to the draft to ensure that Washington's market analysis program achieves the goals of increased efficiencies and cost savings that the reform efforts are intended to create for state regulators and the industry. This includes the establishment of: 1) a data verification process, 2) caps on independent examiner fees, 3) an alternative dispute resolution process, and 4) strong confidentiality protections. Each of these items is discussed in more detail below.

Data Verification Process

An important aspect of state market analysis programs is the sharing of consumer complaint and market analysis data among the states, which regulators increasingly rely upon to guide their investigatory and enforcement actions. Unfortunately, insurers have increasingly found that the data relied on can contain significant inaccuracies that can result in the attribution of complaints to the wrong company or product type, higher complaint ratios based on incorrect premium numbers, and incorrect market analysis conclusions. The use of inaccurate data leads to the

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misallocation of regulatory resources and can be damaging to an insurer's reputation. Therefore, we strongly recommend the creation of a process to improve data accuracy that incorporates verification of the information by the company or entity under review. Regulators handle enormous amounts of information on a daily basis and do not have the luxury of devoting resources to double checking complaints against or information about each and every regulated entity. Allowing companies to review data is the most efficient way to make sure information is accurate because they have every incentive to assure that the basic facts are correct and will apply resources necessary to complete reviews in a timely and efficient manner.

Caps on Independent Examiner Fees

We also respectfully request that the OIC consider including language in its Market Conduct Surveillance Model Act that places a limit or cap on the fees that are paid to contract examiners. Market conduct examinations focus on the business practices of health plans and insurers and are designed to monitor their marketing, advertising, policyholder services, underwriting, rating, and claims practices. Some examinations are conducted by the insurance department at its own offices, an "offsite" examination, and others are conducted at the insurer's place of business, an "onsite" examination. Onsite examinations can take weeks or even months to complete and reliance on contract examiners to complete these reviews continues to grow. Because contract examiners are usually paid on an hourly basis and reimbursed for any food and lodging expenses that they incur during the examination, these examiners have an incentive to lengthen the examination process in order to earn the highest fees possible. This can result in huge examination fees for which insurers are required to reimburse the state. In one case, an insurer was assessed fees of over \$2 million for a market conduct examination that found no violations or wrongdoing by the company.

The current draft calls for the commissioner to maintain active management and oversight of examination costs and for disclosure of contract examiners' fees. We suggest building on this base by adding provisions that would reasonably limit contract examiners' fees based on the compensation and allowances under guidelines adopted by the NAIC.

Alternative Dispute Resolution Process

In addition, we also highlight the need for the inclusion of an alternative dispute resolution process to address concerns that arise during the investigation or examination process. The draft recognizes the value of alternative dispute resolution mechanisms and requires one to be used to resolve conflicts with insurers regarding examination fees. We believe the use of such a mechanism should be expanded since disagreements regarding procedural and/or substantive issues can arise throughout the course of an investigation or examination. For these other disagreements, a carrier's current recourse is limited to judicial relief through an administrative hearing and lawsuit. Administrative hearings tend to be adversarial in nature, costly, and lengthy. We believe an alternative dispute resolution process would be a more expeditious, less

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expensive, and more effective manner for handling these matters and suggest use of such a process for all disagreements arising from a market conduct examination.

Strong Confidentiality Protections

Market conduct examinations and market analysis investigations often involve the collection of sensitive, competitive information that could be damaging to a company's business if made public. The draft and current Washington law provide limited protection for an insurer's confidential information that is provided and collected during a market conduct examination and we applaud the draft's recognition that self-evaluative documents must be protected. However, because these documents contain information an insurer gathers to evaluate its compliance with laws and regulations, an activity that should be encouraged, we suggest strengthening the protection of these documents. In addition, with the focus at the NAIC on increased coordination among the states, we strongly recommend strengthening the general confidentiality protections that are currently provided under Washington law. This will ensure that the OIC is able to fully participate in these collaborative efforts by both receiving and sharing confidential information while still maintaining the documents' protection.

As you may recall, the insurance industry trade associations have developed amendments to the NAIC – NCOIL Market Conduct Surveillance Model to further refine and improve the Act. Attached for your reference please find a copy of the Industry Revised Model, along with a chart that compares the NAIC – NCOIL Model, the Industry Revised Model and the OIC Z draft. We have highlighted in yellow the applicable language in the Industry Revised Model that addresses the concerns outlined above.

Thank you for the opportunity to provide comments on this matter and we look forward to continuing to work with the OIC on this legislative proposal. Please feel free to contact us with any questions or concerns.

Sincerely,

Betsy M. Pelovitz
Regional Director
America's Health Insurance Plans

cc: Melvin Sorenson, Carney Badley Spellman, PS



Comparison of NAIC/NCOIL, Industry Proposed, and Washington Proposed Market Conduct Surveillance Model Laws

| Subject | NAIC/NCOIL model provisions ¹ | Industry proposed model (as of 09/15/05) | Washington Office of Commissioner of Insurance "Z" draft bill (as of 02/06) ² |
|----------------|--|--|---|
| Purpose | <p>Section 2. The purpose of this Act is to establish a framework for Insurance Department market conduct actions, including:</p> <p>A. Processes and systems for identifying, assessing and prioritizing market conduct problems that have a substantial adverse impact on consumers, policyholders and claimants;</p> <p>B. Market conduct actions by the commissioner</p> | <p>Section 2. The purpose of this act is to establish a framework for Insurance Department market conduct actions, including:</p> <ul style="list-style-type: none"> • Processes and systems for identifying, assessing and prioritizing market conduct problems that have a substantial adverse impact on consumers, policyholders and claimants; • Market conduct actions by a commissioner to | <p>Sec. 2 The purpose of this chapter is to establish a framework for the commissioner's market conduct actions, including:</p> <p>(1) Processes and systems for identifying, assessing, and prioritizing market problems that have a substantial adverse impact on consumers, policyholders, and claimants;</p> <p>(2) Market actions by a commissioner to</p> |

¹ The provisions of the final NAIC and NCOIL models are the same.

² The proposed bill provides that, except as noted, the provisions of current chapter 48.03 apply to market conduct examinations. Those provisions address some of the same topics addressed in the NAIC/NCOIL and industry models and, as appropriate, those provisions are inserted. In some cases, the current statutory requirements potentially conflict with the bill's provisions.

Comparison of NAIC/NCOIL and Industry Proposed
Market Conduct Surveillance Model Laws

| Subject | NAIC/NCOIL model provisions ¹ | Industry proposed model (as of 09/15/05) | Washington Office of Commissioner of Insurance "Z" draft bill (as of 02/06) ² |
|---|---|--|---|
| | to substantiate such market conduct problems and a means to remedy significant market conduct problems; and C. Procedures to communicate and coordinate market conduct actions among states to foster the most efficient and effective use of resources. | substantiate such market conduct problems and a means to remedy significant market conduct problems; and • Procedures to communicate and coordinate market conduct actions among states to foster the most efficient and effective use of resources. | substantiate such market problems and a means to remedy significant market problems; and (3) Procedures to communicate and coordinate market conduct actions among state insurance regulators to foster the most efficient and effective use of resources. |
| Scope | No comparable provision. | Section 3. Notwithstanding any other grant of authority, the Commissioner, as applicable, may undertake market analysis or market conduct action only as provided by the Act. Authority not expressly delegated to the Commissioner under this Act shall not be inferred. | Sec. 3. This chapter applies to all entities regulated by this title, and to all persons or entities acting as or holding themselves out as insurers in this state, unless otherwise exempted from the provisions of this title. |
| Definitions Drafting note | No comparable note. | Section 4. <i>Drafting Note: If necessary, definitions of "insurer" and "insurance department" (or other appropriate regulatory agency) may be added. If a state has the authority to conduct market conduct examinations of third party administrators or other non-insurer entities, the appropriate provisions of this Model Act may be amended to extend its requirements and protections to such entities.</i> | No comparable note. |
| Definitions Best practices organization | No comparable definition. | No comparable definition. | Sec. 4(1) "Best practices organization" means insurance marketplace standards association or a similar generally recognized organization whose |

Comparison of NAIC/NCOIL and Industry Proposed
Market Conduct Surveillance Model Laws

| Subject | NAIC/NCOIL model provisions ¹ | Industry proposed model (as of 09/15/05) | Washington Office of Commissioner of Insurance "Z" draft bill (as of 02/06) ² |
|--|--|---|---|
| | | | purpose and central mission is the promotion of high ethical standards in the insurance marketplace. |
| Definitions Commissioner | Section 3.A. "Commissioner" means the chief insurance regulatory official of the state. <i>Drafting Note: Where the word "commissioner" appears in the Model Act, the appropriate designation for the chief insurance regulatory official of the state, if different, should be substituted.</i> | Section 4.(a) "Commissioner" means the chief insurance regulatory official of the state. <i>Drafting note: Where the word "commissioner" appears in the Model Act, the appropriate designation for the chief insurance regulatory official of the state, if different, should be substituted.</i> | Sec. 4(2) "Commissioner" means the insurance commissioner of this state. |
| Definitions Complaint | Section 3.B. "Complaint" means a written or documented oral communication primarily expressing a grievance, meaning an expression of dissatisfaction. | Section 4.(b) "Complaint" means a written or documented oral communication, the primary intent of which is to express a grievance or an expression of dissatisfaction. For health companies, a grievance is a written complaint submitted by or on behalf of a covered person. | Sec. 4(3) "Complaint" means a written or documented oral communication primarily expressing a grievance, meaning an expression of dissatisfaction. |
| Definitions Insurer | No comparable definition. | No comparable definition. | Sec. 4(4) "Insurer" means every person engaged in the business of making contracts of insurance and includes every such entity regardless of name which is regulated by this title. For purposes of this chapter, health care service contractors defined in chapter 48.44 RCW, health |

Comparison of NAIC/NCOIL and Industry Proposed
Market Conduct Surveillance Model Laws

| Subject | NAIC/NCOIL model provisions ¹ | Industry proposed model (as of 09/15/05) | Washington Office of Commissioner of Insurance "Z" draft bill (as of 02/06) ² |
|---|---|--|--|
| | | | maintenance organizations defined in chapter 48.46 RCW, fraternal benefit societies defined in chapter 48.36A RCW, and self-funded multiple employer welfare arrangements defined in chapter 48.125 RCW 23 are defined as insurers. |
| Definitions Market analysis | Section 3.C. "Market analysis" means a process whereby market conduct surveillance personnel collect and analyze information from filed schedules, surveys, required reports and other sources in order to develop a baseline and to identify patterns of conduct or practices of insurers that deviate significantly from the norm or that pose a potential risk to the insurance consumer. | Section 4.(c) "Market Analysis" means a process whereby market conduct surveillance personnel collect and analyze information from filed schedules, surveys, required reports and other sources in order to develop a baseline understanding of the marketplace and to identify patterns or practices of insurers that deviate significantly from the norm or that may pose a potential risk to the insurance consumer. | Sec. 4(5) "Market analysis" means a process whereby market regulation personnel collect and analyze information from filed schedules, surveys, required reports, and other sources in order to develop a baseline understanding of the marketplace and to identify patterns or practices of insurers that deviate significantly from the norm or that may pose a potential risk to the insurance consumer. |
| Definitions Market conduct action | Section 3.D. "Market conduct action" means any of the range of activities set forth in this Act that the Commissioner may initiate, prior to conducting a targeted market conduct examination, to assess the market and practices of insurers licensed to do business in this state. The Commissioner's activities to resolve an individual consumer complaint or other report of a specific instance of misconduct are not market conduct actions for purposes of this Act. | Section 4.(d) "Market Conduct Action" means any of the full range of activities that the Commissioner may initiate to assess and address the market practices of insurers licensed to do business in this state, beginning with market analysis and extending to targeted examinations. The Commissioner's activities to resolve an individual consumer complaint or other report of a specific instance of misconduct are not market conduct actions for purposes of this act. | Sec. 4(6) "Market action" means any of the full range of activities that the commissioner may initiate to assess and address the market practices of insurers, beginning with market analysis and extending to examinations. The commissioner's activities to resolve an individual consumer complaint or other report of a specific instance of misconduct is not market conduct actions for purposes of this chapter. |

Comparison of NAIC/NCOIL and Industry Proposed
Market Conduct Surveillance Model Laws

| Subject | NAIC/NCOIL model provisions ¹ | Industry proposed model (as of 09/15/05) | Washington Office of Commissioner of Insurance "Z" draft bill (as of 02/06) ² |
|---|---|--|---|
| Definitions Market conduct examination | No definition of "market conduct examination." See definition of "targeted examination" for other definitions. | Section 4.(e) "Market Conduct Examination" means a review of one or more lines of business of an insurer domiciled in this state that is not conducted for cause. The term includes a review of rating, tier classification, underwriting, policyholder service, claims, marketing and sales, producer licensing, complaint handling practices, or compliance procedures and policies. | No comparable definition. |
| Definitions Market conduct surveillance personnel | Section 3.E. "Market conduct surveillance personnel" means those individuals employed or contracted by the commissioner to collect, analyze, review or act on information on the insurance marketplace that identifies patterns or practices of insurers. | Section 4.(f) "Market Conduct Surveillance Personnel" means those individuals employed by or under contract with the department who collect, analyze, review, or act on information regarding insurer patterns or practices. | Sec. 4(7) "Market regulation personnel" means those individuals employed or contracted by the commissioner to collect, analyze, review, or act on information on the insurance marketplace that identifies patterns or practices of insurers. |
| Definitions National Association of Insurance Commis- sioners | Section 3. F. "National Association of Insurance Commissioners" (NAIC) means the organization of insurance regulators from the fifty (50) states, the District of Columbia and the four (4) U.S. territories. <i>Drafting Note: If statutory drafting conventions require further description, the following language should be used: "Its mission is to assist insurance regulators in</i> | Section 4.(g) "National Association of Insurance Commissioners" (NAIC) means the organization of insurance regulators from the 50 states, the District of Columbia and the five (5) U.S. territories. <i>Drafting Note: If statutory drafting conventions require further description, the following language should be used: "Its mission is to assist insurance regulators in protecting the public interest, promoting competitive markets, facilitating the fair and equitable</i> | Sec. 4 (8) "National association of insurance commissioners" (NAIC) has the same meaning as in RCW 48.02.140. <i>RCW 48.02.140 (3) For the purposes of this code "National Association of Insurance Commissioners" means that voluntary organization of the public officials having supervision of insurance in the respective states, districts, and territories of the</i> |

Comparison of NAIC/NCOIL and Industry Proposed
Market Conduct Surveillance Model Laws

| Subject | NAIC/NCOIL model provisions ¹ | Industry proposed model (as of 09/15/05) | Washington Office of Commissioner of Insurance "Z" draft bill (as of 02/06) ² |
|---|---|--|---|
| | <i>protecting the public interest, promoting competitive markets, facilitating the fair and equitable treatment of insurance consumers, promoting the reliability, solvency and financial solidity of insurance institutions, and supporting and improving state regulation of insurance.</i> | <i>treatment of insurance consumers, promoting the reliability, solvency and financial solidity of insurance institutions, and supporting and improving state regulation of insurance.</i> | <i>United States, whatever other name such organization may hereafter adopt, and in the affairs of which each of such public officials is entitled to participate subject to the constitution and bylaws of such organization.</i> |
| Definitions NAIC Market Analysis Handbook | Section 3.G. "NAIC <i>Market Analysis Handbook</i> " means the outline of the elements and objectives of market analysis as developed and adopted by the NAIC, and the process by which states can establish and implement market analysis programs. | No comparable provision. | Sec. 4(9) "NAIC market analysis handbook" means the outline of the elements and objectives of market analysis developed and adopted by the NAIC, and the process by which states can establish and implement market analysis programs, or a successor product. |
| Definitions NAIC Market Conduct Examiner's Handbook | Section 3.H. "NAIC <i>Market Conduct Examiner's Handbook</i> " means the set of guidelines developed and adopted by the NAIC that documents established practices to be used by market conduct surveillance personnel in developing and executing an examination. | Section 4.(g)(1) "NAIC Market Conduct Examiner's Handbook" means the set of guidelines developed and adopted by the NAIC, which documents established practices to be used by market conduct surveillance personnel in developing and executing an examination. | Sec. 4 (10) "NAIC market conduct examiner's handbook" means the set of guidelines developed and adopted by the NAIC that documents established practices to be used by market regulation personnel in developing and executing an examination, or a successor product. |
| Definitions NAIC Market Conduct | Section 3.I. "NAIC <i>Market Conduct Uniform Examination Procedures</i> " means the set of guidelines developed and adopted by the NAIC designed | Section 4.(f) "NAIC Market Conduct Uniform Examination Procedures" means the set of guidelines developed and adopted by the NAIC designed to be used by | Sec. 4 (11) "NAIC market conduct uniform examination procedures" means the set of guidelines developed and adopted by the NAIC designed to |

Comparison of NAIC/NCOIL and Industry Proposed
Market Conduct Surveillance Model Laws

| Subject | NAIC/NCOIL model provisions ¹ | Industry proposed model (as of 09/15/05) | Washington Office of Commissioner of Insurance "Z" draft bill (as of 02/06) ² |
|---|--|---|--|
| Uniform Examination Procedures | to be used by market conduct surveillance personnel in conducting an examination. | market conduct surveillance personnel in conducting an examination. | be used by market regulation personnel in conducting an examination, or a successor product. |
| Definitions NAIC Standard Data Request | Section 3. J. "NAIC Standard Data Request" means the set of field names and descriptions developed and adopted by the NAIC for use by market conduct surveillance personnel in an examination. | Section 4.(g)(3) "NAIC Standard Data Request" means the set of field names and descriptions developed and adopted by the NAIC for use by market conduct surveillance personnel in a market conduct action. | Sec. 4(12) "NAIC standard data request" means the set of field names and descriptions developed and adopted by the NAIC for use by market regulation personnel in an examination, or a successor product. |
| Definitions Qualified contract examiner | Section 3.K. "Qualified contract examiner" means a person under contract to the commissioner, who is qualified by education, experience and, where applicable, professional designations, to perform market conduct actions. | Section 4.(h) "Qualified Contract Examiner" means a person under contract to the Commissioner, who is qualified by education, experience and, where applicable, professional designations, to perform market conduct actions. | Sec. 4(13) "Qualified contract examiner" means a person under contract to the commissioner, who is qualified by education, experience, or professional designations, to perform market conduct actions. |
| Definitions Targeted examination | Section 3.L. "Targeted examination" means a focused exam, based on the results of market analysis indicating the need to review either a specific line of the business or specific business practices, including but not limited to underwriting and rating, marketing and sales, complaint handling operations/management, advertising materials, licensing, policyholder services, nonforfeitures, claims handling, or policy forms and filings. A targeted | Section 4.(i) "Targeted Examination" means a focused exam, based on the results of market analysis indicating the need to review either a specific line of business or specific business practices, including but not limited to underwriting and rating, marketing and sales, complaint handling operations/management, advertising materials, licensing, policyholder services, non-forfeitures, claims handling, or policy forms and filings. A targeted examination may be conducted by desk examination or by an on-site examination. | Sec. 4(14) "Targeted examination" means a focused examination, based on the results of market analysis indicating the need to review either a specific line or lines of business, or specific business practices, including but not limited to: (a) underwriting and rating; (b) marketing and sales; (c) complaint handling; (d) operations and management; (e) advertising; (f) licensing; (g) policyholder services; (h) nonforfeitures; (i) claims handling; and (j) policy forms and |

Comparison of NAIC/NCOIL and Industry Proposed
Market Conduct Surveillance Model Laws

| Subject | NAIC/NCOIL model provisions ¹ | Industry proposed model (as of 09/15/05) | Washington Office of Commissioner of Insurance "Z" draft bill (as of 02/06) ² |
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| | <p>examination may be conducted by desk examination or by an on-site examination.</p> <p>(1) "Desk examination" means a targeted examination conducted by an examiner at a location other than an insurer's premises. A desk examination is usually performed at the Insurance Department's offices with the insurer providing requested documents by hard copy or by microfiche, discs or other electronic media, for review.</p> <p>(2) "On-site examination" means a targeted examination that is conducted at the insurer's home office or the location where the records under review are stored.</p> | <p>(1) "Desk examination" means an examination conducted by an examiner at a location other than an insurer's premises. The term includes an examination performed at the Insurance Department's offices with the insurer providing requested documents by hard copy microfiche, discs or other electronic media, for review.</p> <p>(2) "On-site examination" means an examination that is conducted at the insurer's home office or the location where the records under review are stored.</p> | <p>filings. A targeted examination may be conducted by desk examination or by an on-site examination.</p> <p>(i) "Desk examination" means a targeted examination that is conducted by an examiner at a location other than the insurer's premises. A desk examination is usually performed at the commissioner's offices with the insurer providing requested documents by hard copy, microfiche, discs, or other electronic media, for review.</p> <p>(ii) "On-site examination" means a targeted examination conducted at the insurer's home office or the location where the records under review are stored.</p> |
| <p>Definitions</p> <p>Third party model or product</p> | <p>Section 3.M.</p> <p>"Third-party model or product" means a model or product provided by an entity that is separate from and not under direct or indirect corporate control of the insurer using the model or product.</p> | <p>No comparable definition.</p> | <p>Sec. 4(15)</p> <p>"Third-party model or product" means a model or product provided by an entity separate from and not under direct or indirect corporate control of the insurer using the model or product.</p> |
| <p>Definitions</p> <p>Insurance self-compliance audit</p> | <p>No comparable definition.</p> | <p>Defines "self-audit document" for purposes of confidentiality.</p> <p>Section 9.(e)</p> <p>For purposes of this subsection, "self-audit document"</p> | <p>Sec. 4(17)</p> <p>"Insurance compliance self-evaluative audit document" means documents prepared as a result of or in connection with an insurance compliance audit. An insurance compliance self-</p> |

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| | | <p>means a document that is prepared as a result of or in connection with an insurance compliance audit.</p> | <p>evaluative audit document may include:</p> <ul style="list-style-type: none"> (a) A written response to the findings of an insurance compliance self-evaluative audit; (b) Any supporting information that is collected or developed for the primary purpose and in the course of an insurance compliance self-evaluative audit, including but not limited to field notes and records of observations, findings, opinions, suggestions, conclusions, drafts, memoranda, drawings, photographs, exhibits, computer generated or electronically recorded information, phone records, maps, charts, graphs, and surveys; (c) Any of the following: <ul style="list-style-type: none"> (i) An insurance compliance self-evaluative audit report prepared by an auditor, who may be an employee of the company or an independent contractor, which may include the scope of the audit, the information gained in the audit, conclusions, and recommendations, with exhibits and appendices; (ii) Memoranda and documents analyzing portions or all of the insurance compliance self-evaluative audit report and discussing potential implementation issues; (iii) An implementation plan that addresses correcting past noncompliance, improving current compliance, and preventing future noncompliance; or (iv) Analytic data generated in the course of conducting the insurance compliance self-evaluative audit. |

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| Domestic responsibility /Deference to other states | No comparable provisions. | <p>Section 5.</p> <p>(a) The Commissioner is responsible for conducting market conduct examinations on insurers domiciled in the state. The Commissioner may delegate that responsibility to the Commissioner of another state, provided such Commissioner agrees to accept the delegated responsibility. If the Commissioner elects to delegate responsibility for examining an insurer, the Commissioner shall accept a report of the examination prepared by the Commissioner to whom the responsibility has been delegated.</p> <p>(b) If the insurer to be examined is part of an insurance holding company system, the Commissioner may also seek to simultaneously examine any affiliate of the insurer under common control and management which are licensed to write the same lines of business in this state, provided the affiliate and the Commissioner of their state of domicile consent to such examination.</p> <p>(c) In lieu of conducting a targeted market conduct examination of an insurer licensed but not domiciled in this state, the Commissioner shall accept a report of a market conduct examination on such insurer prepared by the Commissioner of the insurer's state of domicile or another state, provided:</p> <p>(1) The laws of that state applicable to the subject of the examination are substantially similar to those of this state; and</p> <p>(2) The examining state has a market conduct</p> | No comparable provisions unless noted. |

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| | | <p>surveillance system that the Commissioner deems comparable to the market conduct surveillance system required under this Act.</p> <p>(d) The Commissioner's determination under Subsection (c) (2) is discretionary with the Commissioner and is not subject to appeal.</p> <p>(e) Subject to a determination under Subsection (c), if a market conduct examination conducted by another state results in a finding that an insurer should modify a specific practice or procedure, the Commissioner shall accept documentation that the insurer has made a similar modification in this state, in lieu of initiating a market conduct action or examination related to that practice or procedure.</p> <p><i>Drafting note: It is anticipated that as states adopt this NCOIL model law, or similar statutes, the practice of domestic deference and other appropriate forms of interstate collaboration, whereby states rely on market conduct examinations performed by other states, will reduce and eventually eliminate unnecessary duplication of effort in the area of market conduct regulation.</i></p> <p><i>Drafting note: If the NAIC moves to an accreditations process for market conduct activity, the Model might be amended to require that a state shall accept the comprehensive examination of another state only if that state is accredited.</i></p> | <p>Sec. 13</p> <p>(2) If a market conduct examination or action performed by another state insurance regulator results in a finding that an insurer should modify a specific practice or procedure, the commissioner may, in lieu of conducting a market action or examination, accept verification that the insurer made a similar modification in this state.</p> <p>WRC §48.03.010(4)</p> <p><i>In lieu of making an examination under this chapter, the commissioner may accept a full report of the last recent examination of a nondomestic rating or advisory organization, or joint underwriting or joint reinsurance group, association or organization, as prepared by the insurance supervisory official of the state of domicile or of entry. In lieu of an examination under this chapter of a foreign or alien insurer licensed in this state, the commissioner may accept an examination report on the company as prepared by the insurance department for the company's state of domicile or port-of-entry</i></p> |

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| | | | <p><i>state until January 1, 1994. Thereafter, an examination report may be accepted only if: (a) That insurance department was at the time of the examination accredited under the National Association of Insurance Commissioners' financial regulation standards and accreditation program; or (b) the examination was performed either under the supervision of an accredited insurance department or with the participation of one or more examiners employed by an accredited state insurance department who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.</i></p> |
| <p>Market analysis procedures</p> <p>Collection of information</p> | <p>Section 4.</p> <p>A. (1) The commissioner shall gather insurance market information from data currently available to the Insurance Department, as well as surveys and required reporting requirements, information collected by the NAIC and a variety of other sources in both the public and private sectors, and information from within and outside the insurance industry.</p> | <p>Section 6.</p> <p>(a)(1) The Commissioner shall gather information from data currently available to the Insurance Department, as well as surveys and required reporting requirements, information collected by the NAIC, information from within and outside the insurance industry from objective sources, information from websites for insurers, agents and other organizations and information from other sources, provided they are published at least annually in a bulletin or regulation,</p> | <p>Sec. 5</p> <p>(1)(a) The commissioner shall collect and report market data information to the NAIC's market information systems, including the complaint data base system, the examination tracking system, the regulatory retrieval system, other successor systems, or to additional systems as the commissioner determines is necessary for market analysis.</p> |

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| Annual statement | No comparable provision. | prior to use. No comparable provision. | (3)(a) The commissioner shall gather information from data currently available to the commissioner, surveys, required reports, information collected by the NAIC, other sources in both the public or private sectors, and information from within and outside the insurance industry. The commissioner may request insurers to submit data and information that is necessary to conduct market analysis. Sec. 5 (2) Each entity subject to the provisions of this chapter shall file a market conduct annual statement, in the general form and context, in the time frame required by, and according to instructions provided by the NAIC. The commissioner shall suspend or revoke the certificate of authority or other authorizing document of any entity that fails to file its market conduct annual statement when due or during any extension of time therefor, which the commissioner for good cause, may grant. |
| Analysis of information | Section 4. A.(2) The information shall be analyzed in order to develop a baseline understanding of the insurance marketplace and to identify for further review insurers or practices that deviate significantly from the norm or that may pose a potential risk to the insurance consumer. The commissioner shall use the NAIC <i>Market Analysis Handbook</i> as one resource in | Section 6. (a)(2) Such information shall be analyzed in order to develop a baseline understanding of the insurance marketplace and to identify for further review insurers or insurance practices that deviate significantly from the norm or that pose a potential risk to the insurance consumer. | Sec. 5 (b) The information shall be analyzed in order to develop a baseline understanding of the marketplace and to identify for further review insurers or practices that deviate significantly from the norm or that may pose a potential risk to the insurance consumer. The commissioner shall use the NAIC market analysis handbook as one resource in performing this analysis. |

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| | <p>performing this analysis.</p> <p>No comparable provisions.</p> | <p>(a)(3) The Commissioner shall use the following policies and procedures in performing the analysis required under this section:</p> <p>(A) maintain an ongoing Market Analysis Chief (MAC);</p> <p>(B) establish a systematic interdivisional communication program;</p> <p>(C) identify key lines of business for systematic review;</p> <p>(D) identify companies for further analysis based on available information, including but not limited to:</p> <p>(i) complaint activity on justified complaints that indicates a potential harm to consumers;</p> <p>(ii) significant changes in Direct Written Premium volume; and</p> <p>(iii) significant changes or anomalies in reserves.</p> <p>(b) After completion of any level of Market Analysis, the state shall contact the insurer to verify the analysis prior to further market conduct action;</p> <p>(A) Insurer specific information that is used and relied upon by the department when developing the baseline analysis and identifying insurers or practices for further review shall be substantiated by appropriate personnel in the department and verified by the insurer.</p> <p>(B) The Commissioner may only utilize information from NAIC databases for market analysis provided that the Commissioner verifies the information directly with that state prior to its consideration.</p> | <p>No comparable provisions.</p> |

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| Additional analysis of market actions | <p>Section 4.</p> <p>B.(1) If the commissioner determines, as a result of the market analysis, that further inquiry into a particular insurer or practice is needed, the following continuum of market conduct actions may be considered prior to conducting a targeted, on-site examination. The action selected shall be made known to the insurer in writing if the action involves insurer participation or response. These actions may include, but are not limited to:</p> <ul style="list-style-type: none"> (a) Correspondence with the insurer; (b) Insurer interviews; (c) Information gathering; (d) Policy and procedure reviews; (e) Interrogatories; (f) Review of insurer self-evaluation (if not subject to a privilege of confidentiality) and compliance programs, including insurer membership in a best-practice organization; and <p><i>Drafting Note: A best practices organization has as its central mission the promotion of high ethical standards in the marketplace.</i></p> | <p>(C) Except as otherwise specifically provided, the department or the Commissioner, as applicable, may not require an insurer to report information in a manner that is inconsistent with the records the insurer maintains in the ordinary course of business or can create at a reasonable expense or effort.</p> <p>Section 6.</p> <p>(c) If the commissioner determines, as a result of the market analysis, that further inquiry into a particular insurer or practice is needed, the following continuum of market conduct actions shall be considered prior to conducting a targeted market conduct examination. The action selected shall be made known to the insurer in writing if the action involves insurer participation or response. These actions may include, but are not limited to:</p> <ul style="list-style-type: none"> (1) Correspondence with Insurer (2) Insurer Interviews (3) Information Gathering (4) Policy and Procedure Reviews (5) Interrogatories (6) Review of Insurer Self-Evaluation (if not subject to a privilege of confidentiality) and compliance programs, including insurer membership in a best-practice organization. <p><i>Drafting note: A best practices organization has as its central mission the promotion of high ethical standards in the marketplace.</i></p> | <p>Sec. 5</p> <p>(4)(a) If the commissioner determines, as a result of market analysis, that further inquiry into a particular insurer or practice is needed, the following continuum of market actions may be considered before conducting a market conduct examination. The action selected shall be made known to the insurer, in writing, if the action involves insurer participation or response. These actions may include, but are not limited to:</p> <ul style="list-style-type: none"> (i) Correspondence with the insurer; (ii) Insurer interviews; (iii) Information gathering; (iv) Policy and procedure reviews; (v) Interrogatories; (vi) Review of insurer self-evaluation and compliance programs. This may include consideration of the insurer's membership in a best practices organization, if the commissioner is satisfied that the organization's qualification process is likely to provide reasonable assurance of compliance with pertinent insurance laws; (vii) Desk examinations; and (viii) Investigations. |

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| Cost effectiveness | (g) Desk examinations. Section 4. B.(2) The commissioner shall select a market conduct action that is cost effective for the Insurance Department and the insurer while protecting the insurance consumer. | Section 7. (d) The Commissioner shall select market conduct actions that are efficient and cost-effective for the Insurance Department and the insurer, while protecting the interests of the insurance consumer. | Sec. 5 (b) Except in extraordinary circumstances, the commissioner shall select the least intrusive and most cost-effective market action that the commissioner determines will provide the necessary protections for consumers. |
| Duplicate inquiries/state coordination | Section 4. C. The commissioner shall take steps reasonably necessary to eliminate duplicative inquiries and coordinate the market conduct actions and findings with other states. | Section 7. (e) The Commissioner shall take steps reasonably necessary to eliminate requests for information that duplicate or conflict with information provided as part of an insurer's annual financial statement, the annual market conduct statement of the National Association of Insurance Commissioners, or other required schedules, surveys, or reports that are regularly submitted to the Commissioner, or with data requests made by other states if that information is available to the Commissioner, unless the information is state specific, and coordinate the market conduct actions and findings of this state with those of other states. | Sec. 5 (5) The commissioner shall take those steps reasonably necessary to eliminate duplicative inquiries and coordinate market conduct actions and findings with other state insurance regulators. |
| Manner for reporting information | No comparable provision. | Section 7. (f) Except as otherwise specifically provided, the department or the Commissioner, as applicable, may not require an insurer to report information in a manner that is inconsistent with the records the insurer maintains in the ordinary course of business or can create at a reasonable expense or effort. | Sec. 5 (1)(b) Market data and information that is collected and maintained by the commissioner shall be compiled and submitted in a manner that meets the requirements of the NAIC and its systems. |

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| Managing general agent | No comparable provision. | No comparable provision. | <p>Sec. 5 (6) For purposes of conducting an examination or other market action on an insurer, the commissioner may examine or conduct a market action on any managing general agent or other person, insofar as that examination or market action is, in the sole discretion of the commissioner, necessary or material to the examination or market action of the insurer.</p> <p><i>RCW 48.03.010(6)</i> <i>For the purposes of completing an examination of any company under this chapter, the commissioner may examine or investigate any managing general agent or any other person, or the business of any managing general agent or other person, insofar as that examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company.</i></p> |
| Protocols for market conduct actions Focus | Section 5. A. Market conduct actions taken as a result of a market analysis shall focus on the general business practices and compliance activities of insurers rather than identifying infrequent or | Section 7. (a) Market conduct actions taken as a result of a market analysis shall focus on the general business practices and compliance activities of insurers, rather than identifying infrequent or unintentional random | Sec. 6. (1) Market actions shall be taken as a result of market analysis and shall focus on the general business practices and compliance activities of insurers. |

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| Timing/Co-ordination | <p>unintentional random errors that do not cause significant consumer harm.</p> <p>Section 5. B.(1) The commissioner is authorized to determine the frequency and timing of the market conduct actions. The timing shall depend on the specific market conduct action to be initiated, unless extraordinary circumstances indicating a risk to consumers require immediate action.</p> | <p>errors that do not cause significant consumer harm.</p> <p>Section 7. (b)(1) The Commissioner is authorized to determine the frequency and timing of the market conduct actions. The timing shall depend on the specific market conduct action to be initiated, unless extraordinary circumstances indicating a risk to consumers require immediate action.</p> | <p>Sec. 6 (2)(a) The commissioner is authorized to determine the frequency and timing of such market actions. The timing shall depend upon the specific market action to be initiated, unless extraordinary circumstances indicating a risk to consumers require immediate action.</p> |
| Opportunity to resolve issues | <p>(2) If the commissioner has information that more than one insurer is engaged in common practices that may violate statute or regulations, the commissioner may schedule and coordinate multiple examinations simultaneously.</p> <p>C. The insurer may be give an opportunity to resolve matters that arise as a result of a market analysis to the satisfaction of the commissioner before any additional market conduct actions are taken against the insurer.</p> | <p>(b)(2) If the Commissioner has information that more than one insurer is engaged in practices that may violate statutes or rules, the Commissioner may schedule and coordinate multiple examinations simultaneously.</p> <p>(c) The insurer shall be notified of any practice or procedure which is to be the subject of a market conduct action and shall be given an opportunity to resolve matters that arise as a result of a market analysis to the satisfaction of the Commissioner before any additional market conduct actions are taken against the insurer. If the insurer has modified such practice or procedure as a result of a market conduct action taken by the Commissioner of another state, the Commissioner shall accept documentation that the insurer has satisfactorily modified the practice or procedure and made similar modification to such practice or procedure in this state.</p> | <p>(b) If the commissioner has information that more than one insurer is engaged in common practices that may violate statutes or rules, the commissioner may schedule and coordinate multiple examinations simultaneously.</p> <p>(3) The insurer may be given an opportunity to resolve matters that 6 arise as a result of a market analysis to the satisfaction of the commissioner before any additional market conduct actions are taken against the insurer.</p> |

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| Changes in NAIC work products | <p>Section 5. D. For any change made to an NAIC work product referenced in this Act that (states shall select one of the following three provisions)</p> <p>Option One [materially changes the way in which market conduct actions are conducted, the Commissioner shall give notice and provide parties with an opportunity for a public hearing pursuant to (cite appropriate state administrative procedures act.) If no hearing is held, the commissioner shall use the versions of the work products most recently developed and adopted by the NAIC.]</p> <p>Option Two [materially changes the way in which market conduct actions are conducted, the Commissioner shall give notice and provide parties with an opportunity for a public hearing pursuant to (cite appropriate state administrative procedures act). If a hearing is requested and not held, the commissioner shall use the versions of the work products most recently developed and adopted by the NAIC. For purpose of the subsection, "material change" means any change that would require a statutory or rule change.]</p> <p>Option Three [changes the way in which market conduct</p> | <p>Section 7. (d) For any change made to an NAIC work product referenced in this Act, the Commissioner shall adopt by regulation procedures and documents that are substantially similar to the NAIC work products defined or referenced in this Act. Market analysis, market conduct actions and market conduct examinations shall be performed in accordance with such regulation. If any subsequent amendment to an NAIC work product defined or referenced in this Act materially changes the way in which market analysis, market conduct actions or market conduct examinations are performed, the Commissioner shall give notice and provide interested parties with an opportunity for a public hearing pursuant to (cite the appropriate state administrative procedures act) before such amendment is incorporated into the regulation. If no hearing is held, the Commissioner shall use the version of such work product most recently developed and adopted by the NAIC.</p> | <p>(4) For any change made to an NAIC work product referenced in this chapter that materially changes the way in which market actions are conducted, the commissioner may give notice and provide parties with an opportunity for a public hearing under chapter 34.05 RCW, or the commissioner may use the versions of the work products most recently developed and adopted by the NAIC.</p> <p><i>RCW 34.05 is Washington's Administrative Procedures Act.</i></p> |

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| Commissioner access | <p>actions are conducted, the Commissioner shall give notice and provide parties with an opportunity for a public hearing pursuant to (cite appropriate state administrative procedures act) in the following circumstances:</p> <p>(1) Any change that would necessitates a change in a statute, regulation or rule; or</p> <p>(2) If a commissioner deviates from the most recently adopted NAIC work product.]</p> <p>Section 5.</p> <p>E. Except as otherwise provided by law, every insurer or person from whom information is sought, its officers, directors and agents shall provide the commissioner with convenient and free access to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the insurer or person. The officers, directors, employees, insurance producers and agents of the insurer or person shall facilitate market conduct actions and aid in market conduct actions so far as it is in their power to do so.</p> | <p>Section 7.</p> <p>(e) Except as otherwise provided by law, every insurer or person from whom information is sought, its officers, directors and agents shall provide the commissioner with convenient and free access to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the company during normal business hours. The officers, directors, employees, insurance producers and agents of the insurer or person must facilitate market conduct actions and market conduct examinations so far as it is in their power to do so.</p> | <p>Sec. 8.</p> <p>(3) Each officer, director, employee, and agent of an insurer shall facilitate and aid in a market action or examination.</p> <p><i>RCW 48.03.030</i></p> <p><i>(1) Every person being examined, its officers, employees, and representatives shall produce and make freely accessible to the commissioner the accounts, records, documents, and files in his possession or control relating to the subject of the examination, and shall otherwise facilitate the examination.</i></p> |
| <p>Protocols for market conduct examinations</p> <p>Conditions for</p> | Section 6. | Section 8. | Sec. 7. |

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| examination | <p>A. When the commissioner determines that other market conduct actions identified in Section 4.B are not appropriate, the commissioner has the discretion to conduct targeted, on-site market conduct examinations in accordance with the NAIC <i>Market Conduct Uniform Examination Procedures</i> and the <i>Market Conduct Examiners Handbook</i>.</p> <p>No comparable provision.</p> | <p>(a) When market analysis identifies a pattern of conduct or practice by an insurer which requires further investigation, and other market conduct actions identified in section 6(c) are not appropriate, the Commissioner has the discretion to conduct targeted market conduct examinations in accordance with the NAIC Market Conduct Uniform Examination Procedures and the Market Conduct Examiners Handbook.</p> <p>(d) The Commissioner may not conduct a market conduct examination more frequently than once every five years. The Commissioner may waive conducting a market conduct examination based on market analysis.</p> | <p>(1) When the commissioner determines that other market actions identified in section 5(4)(a) of this act are not appropriate, the commissioner has the discretion to conduct on-site market conduct examinations in accordance with the NAIC market conduct uniform examination procedures and the NAIC market conduct examiner's handbook.</p> <p>RCW 48.03.010 shall not apply to market conduct examinations insofar as that statute requires periodic or regular examinations. However, in all other respects, chapter 48.03 RCW shall apply to market conduct examinations.</p> |
| Notice | <p>B. Concomitant with the notification requirements established in Subsection E. of this section, the commissioner shall post notification on the NAIC Examination Tracking System, or successor NAIC product as determined by the commissioner, that a market conduct examination has been scheduled.</p> | <p>(c) Concomitant with the notification requirements established in subsection (f) of this section, the commissioner shall post notification on the NAIC Examination Tracking System, or successor NAIC product as determined by the commissioner, that a market conduct examination has been scheduled.</p> | |
| Examination of foreign and alien insurers | <p>Section 6. C. In lieu of an examination of a foreign or alien insurer licensed in this state under this Act, the commissioner may accept an examination report of another state provided that the state has a market surveillance system</p> | <p>Section 8. (b) If the insurer to be examined is not a domestic insurer, the Commissioner shall coordinate the examination with the insurance Commissioner of the state in which the insurer is organized.</p> | <p>Sec. 7. (2) In lieu of an examination of a foreign or alien insurer licensed in this state under this chapter, the commissioner may accept an examination report of another state provided that the state has a market surveillance system the</p> |

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| | <p>the commissioner deems comparable to the market surveillance system set forth in this law.</p> <p><i>Drafting note: It is anticipated that as states adopt this model or similar statutes, the practice of "domestic deference," whereby states rely on market conduct examinations performed by other states, will reduce and eventually eliminate unnecessary duplication of effort in the area of market conduct regulation..</i></p> | <p>(Also see provisions under Domestic responsibility/Deference to other states.)</p> | <p>commissioner deems comparable to the market regulation and surveillance system set forth in this law.</p> <p>RCW §48.03.010(4) <i>In lieu of making an examination under this chapter, the commissioner may accept a full report of the last recent examination of a nondomestic rating or advisory organization, or joint underwriting or joint reinsurance group, association or organization, as prepared by the insurance supervisory official of the state of domicile or of entry. In lieu of an examination under this chapter of a foreign or alien insurer licensed in this state, the commissioner may accept an examination report on the company as prepared by the insurance department for the company's state of domicile or port-of-entry state until January 1, 1994. Thereafter, an examination report may be accepted only if: (a) That insurance department was at the time of the examination accredited under the National Association of Insurance Commissioners' financial regulation standards and accreditation program; or (b) the examination was performed either under the supervision of an accredited insurance department or with the participation of one or more examiners employed by an accredited state insurance department who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner</i></p> |

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| Work plan | <p>Section 6.</p> <p>D.(1) Prior to commencement of a targeted on-site market conduct examination, market conduct surveillance personnel shall prepare a work plan that includes:</p> <ul style="list-style-type: none"> (a) The name and address of the insurer to be examined; (b) The name and contact information of the examiner-in-charge; (c) The justification for the targeted, on-site examination; (d) The scope of the targeted, on-site examination; (e) The date the on-site examination is scheduled to begin; (f) Notice of any non-insurance department personnel who will assist in the examination; (g) A time estimate for the targeted, on-site examination; (h) A budget for the targeted, on-site examination if the cost of the examination is billed to the insurer; and (i) An identification of factors that will be included in the billing if the cost of the examination is billed to the insurer. | <p>Section 8.</p> <p>(e)(1) Prior to commencement of a market conduct examination, market conduct surveillance personnel shall prepare a work plan consisting of the following:</p> <ul style="list-style-type: none"> (A) The name and address of the insurer(s) being examined; (B) The name and contact information of the examiner-in-charge; (C) The justification(s) for a targeted examination; (D) The scope of a targeted examination; (E) The date the on-site examination is scheduled to begin; (F) Identification of any non-insurance department personnel who will assist in the examination; (G) A time estimate for the examination; (H) A budget for the examination if the cost of the examination is billed to company; and (I) An identification of factors that will be included in the billing if the cost of the examination is billed to company. | <p><i>consistent with the standards and procedures required by their insurance department.</i></p> <p>Sec. 7.</p> <p>(3) Before commencement of an on-site market conduct examination, market regulation personnel shall prepare a work plan consisting of the following:</p> <ul style="list-style-type: none"> (a) The name and address of the insurer being examined; (b) The name and contact information of the examiner-in-charge; (c) The justification for the targeted, on-site examination; (d) The scope of the on-site examination; (e) The date the on-site examination is scheduled to begin; (f) Notice of any noninsurance department personnel who will assist in the examination; (g) A time estimate for the on-site examination; (h) A budget for the on-site examination if the cost of the examination is billed to the insurer; and (i) An identification of factors that will be included in the billing if the cost of the examination is billed to the insurer. |
| Conduct of targeted, on-site | <p>Section 6.</p> <p>D.(2) Market conduct examinations shall, to the extent feasible, utilize desk examinations and</p> | <p>Section 8.</p> <p>(e)(2) An examination may be conducted through a desk examination or an on-site examination.</p> | <p>Sec. 7.</p> <p>(4) Market conduct examinations shall, to the extent feasible, use desk examinations and data</p> |

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| examination | data requests prior to a targeted on-site examination. | Examinations shall, to the extent feasible, utilize desk examinations and data requests prior to an on-site examination. | requests before an on-site examination. |
| Data requests | <p>Section 6.</p> <p>D.(3) Market conduct examinations shall be conducted in accordance with the NAIC <i>Market Conduct Uniform Examination Procedures</i> and the <i>Market Conduct Examiners Handbook</i>.</p> <p>D.(4) The department shall use NAIC Standard Data Request, (or successor product adopted by regulation that is substantially similar to the foregoing NAIC product.)</p> | <p>Section 8.</p> <p>(e)(3) The department shall use the standard data request or a successor product that is substantially similar to the standard data request as adopted by the Commissioner by rule.</p> | <p>Sec. 7</p> <p>(5) Market conduct examinations shall be conducted in accordance with the provisions set forth in the NAIC market conduct examiner's handbook and the NAIC market conduct uniform examinations procedures.</p> <p>(6) The commissioner shall use the NAIC standard data request.</p> |
| Trigger for a targeted examination | No comparable provision. | <p>Section 8.</p> <p>(e)(4) The causes or conditions, if identified through market analysis, that may trigger a targeted examination are:</p> <p>(A) information obtained from a market conduct annual statement, market survey or report of financial examination indicating potential fraud, that the insurer is conducting the business of insurance without a license or evidencing a potential pattern or practice in violation of [cite statutory reference for the Unfair Trade and Claims Practices Act].</p> <p>(B) A number of justified complaints against the insurer or a justified complaint ratio sufficient to indicate potential fraud, that the insurer is conducting the business of insurance without a license or evidencing a potential pattern or practice in violation</p> | No comparable provisions. |

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| Announce- ment of examination | <p>Section 6.</p> <p>E. Announcement of the examination shall be sent to the insurer and posted on the NAIC's Examination Tracking System (or successor NAIC product, as determined by the commissioner) as soon as possible but in no case later than sixty (60) days before the commencement of the on-site examination, except when the examination is conducted in response to extraordinary circumstances as described by Section 5B(1). The announcement sent to the insurer shall contain the examination work plan and a request for the insurer to name its examination coordinator.</p> | <p>of [cite statutory reference for the Unfair Trade and Claims Practices Act].</p> <p>(C) Information obtained from other objective sources, such as published advertising materials indicate potential fraud, that the insurer is conducting the business of insurance without a license or evidencing a potential pattern or practice in violation of [cite statutory reference for the Unfair Trade and Claims Practices Act].</p> <p>Section 8.</p> <p>(f) Announcement of the examination shall be sent to the insurer and posted on the NAIC's Examination Tracking System (or successor NAIC product, as determined by the commissioner) as soon as possible but in no case later than 60 days before the estimated commencement of an examination, except where the exam is conducted in response to extraordinary circumstances as described in Section 7(b)(1). Such announcement sent to the insurer shall contain the examination work plan and a request for the insurer to name its examination coordinator.</p> | <p>Sec. 7.</p> <p>(7) Announcement of the examination shall be sent to the insurer and posted on the NAIC's examination tracking system, as determined by the commissioner, as soon as possible but in no case later than sixty days before the estimated commencement of the on-site examination, except where the exam is conducted in response to extraordinary circumstances as described in section 6(2)(a) of this act. The announcement sent to the insurer shall contain the examination work plan and a request for the insurer to name its examination coordinator.</p> |
| Expansion of examination | <p>No comparable provisions.</p> | <p>Section 8.</p> <p>(g) If a targeted examination is expanded beyond the reasons provided to the insurer in the notice of the examination required under this Section, the Commissioner shall provide written notice to the insurer, explaining the extent of the expansion and the reasons for the expansion. The department shall</p> | <p>No comparable provisions.</p> |

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| Pre-examination conference | Section 6. F. The commissioner shall conduct a pre-examination conference with the insurer examination coordinator and key personnel to clarify expectations thirty (30) days prior to commencement of the examination. | provide a revised work plan to the insurer before the beginning of any significantly expanded examination. Section 8. (h) The Commissioner shall conduct a pre-examination conference with the insurer's examination coordinator and key personnel to clarify expectations no later than thirty (30) days prior to commencement of the examination. | Sec. 7 (8) The commissioner shall conduct a pre-examination conference with the insurer examination coordinator and key personnel to clarify expectations before commencement of the examination. |
| Exit conference | G. Prior to conclusion of a targeted on-site market conduct examination, the individual among the market conduct surveillance personnel who is designated as the examiner-in-charge shall schedule an exit conference with the insurer. | (i) Prior to the conclusion of a targeted examination, the examiner-in-charge shall conduct an exit conference with the insurer. | (9) Before the conclusion of the field work for an on-site market conduct examination, the individual from the market regulation personnel who is designated as the examiner-in-charge shall schedule an exit conference with the insurer. |
| Examination report | H. (1) The commissioner shall adhere to the following timeline, unless mutual agreement is reached with the insurer to modify the timeline: (a) The commissioner shall deliver the draft report to the insurer within sixty (60) days of the completion of the examination. Completion of the examination shall be defined as the date the commissioner confirms in writing that the examination is completed. | (j)(1) The Commissioner shall adhere to the following timeline, unless a mutual agreement is reached with the insurer to modify the timeline: (A) If the Commissioner elects to issue a report, a draft examination report shall be delivered to the insurer within sixty (60) days following the completion of the examination. Completion of the examination shall be defined as the date the Commissioner confirms in writing that the examination is completed. | (10)(a) The commissioner shall adhere to the requirements of chapter 48.03 RCW concerning issuance of market conduct examination reports. <i>RCW 48.03.040</i> (1) No later than sixty days after completion of each examination, the commissioner shall make a full written report of each examination made by him or her containing only facts ascertained from the accounts, records, and documents examined and from the sworn testimony of individuals, and such conclusions and recommendations as may reasonably be warranted from such facts. |

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| | <p>(b) The insurer shall respond with written comments within thirty (30) days of receipt of the draft report.</p> <p>(c) The department shall make a good faith effort to resolve issues informally and shall prepare a final report within thirty (30) days of receipt of the insurer's written comments, unless a mutual agreement is reached to extend the deadline. The commissioner may make corrections and other changes, as appropriate.</p> <p>(d) The insurer shall, within thirty (30) days, accept the final report, accept the findings of the report or request a hearing. An additional thirty (30) days shall be allowed if agreed to by the commissioner and the insurer. Any such hearing request shall be made in writing and shall follow [insert referenced appropriate administrative procedure act].</p> | <p>(B) The insurer must respond with written comments within 30 days of receipt of the draft report.</p> <p>(C) The department shall make a good faith effort to resolve issues informally and where the Commissioner determines that such examination report is required, shall prepare a final report within 30 days of receipt of the insurer's written comments, unless a mutual agreement is reached to extend the deadline.</p> <p>(D) The commissioner shall make corrections and other changes, as appropriate to reflect resolution of disputed matters, and shall issue the report to the insurer. The insurer shall, within 30 days, accept the final report, file written comments, request an alternative dispute resolution under Section 11 or request a hearing. An additional 30 days shall be allowed if agreed to by the Commissioner and the insurer. Any such hearing request must be made in writing and must follow [insert reference to appropriate administrative procedure act].</p> | <p>(2) The report shall be certified by the commissioner or by his or her examiner in charge of the examination, and shall be filed in the commissioner's office subject to subsection (3) of this section.</p> <p>(3) The commissioner shall furnish a copy of the examination report to the person examined not less than ten days and, unless the time is extended by the commissioner, not more than thirty days prior to the filing of the report for public inspection in the commissioner's office. If such person so requests in writing within such period, the commissioner shall hold a hearing to consider objections of such person to the report as proposed, and shall not so file the report until after such hearing and until after any modifications in the report deemed necessary by the commissioner have been made.</p> |

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| | <p>(2) States shall include the insurer's responses in the final report. The response may be included as an appendix or in the text of the examination report. The insurer is not obligated to submit a response. Individuals involved in the examination may not be named in either the report or the insurer response except to acknowledge their involvement.</p> <p><i>Drafting Note: States should rely upon the NAIC Market Conduct Examiners Handbook to establish specific standards for examination reports.</i></p> | <p>(2) States shall include the company's response in the final report. The response may be included as an appendix or in the text of the examination report. The company is not obligated to submit a response. Individuals involved in the examination should not be named in either the report or the response except to acknowledge their involvement.</p> <p><i>Drafting Note: States should rely upon the NAIC Market Conduct Examiners Handbook to establish specific standards for examination reports.</i></p> | <p>Sec. 7. (10)(b) The insurer's response shall be included in the commissioner's order adopting the final report as an exhibit to the order. The insurer is not obligated to submit a response.</p> <p><i>RCW 48.03.040</i> (4) Within thirty days of the end of the period described in subsection (3) of this section, unless extended by order of the commissioner, the commissioner shall consider the report, together with any written submissions or rebuttals and any relevant portions of the examiner's work papers and enter an order: (a) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, rule, or order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure that violation; (b) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information, and refiling under this section; or (c) Calling for an investigatory hearing with no less than twenty days' notice to the company for purposes of obtaining additional documentation, data, information, and testimony.</p> |

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| Confiden- tiality of examination report | <p>Section 6.</p> <p>I.(1) Upon adoption of the examination report pursuant to Subsection H, the commissioner shall continue to hold the content of the examination report as private and confidential for a period of thirty (30) days, except to the extent provided for in Paragraph (2) of this subsection. Thereafter, the commissioner shall open the report for public inspection, provided no court of competent jurisdiction has stayed its publication.</p> | <p>Section 8.</p> <p>(k)(1) Upon adoption of the examination report pursuant to subsection (j), the Commissioner shall continue to hold the content of the examination report as private and confidential, except to the extent provided for in paragraph (2) of this subsection. Documents and information obtained during an alternative dispute resolution under Section 11, and the results of such action, shall be afforded the same protection. No such report or information shall be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private action. This section may not be construed to limit the Commissioner's authority to use any final or preliminary market conduct examination report, any examiner or company work papers or other documents, or any other information discovered or developed during the course of an examination in the furtherance of any legal or regulatory action that the Commissioner, in the Commissioner's sole discretion may deem appropriate.</p> | <p>Sec. 9</p> <p>(2) If the commissioner elects to issue a report of an examination, a preliminary or draft market conduct examination report is confidential and not subject to disclosure by the commissioner nor is it subject to subpoena or discovery. This subsection does not limit the commissioner's authority to use a preliminary or draft market conduct examination report and related information in furtherance of any legal or regulatory action, or to release it in accordance with the provisions of RCW 48.02.065.</p> <p><i>RCW §48.02.065</i> <i>(Effective until July 1, 2006.)</i> <i>(1) Documents, materials, or other information as described in either subsection (5) or (6), or both, of this section are confidential by law and privileged, are not subject to public disclosure under chapter 42.17 RCW, and are not subject to subpoena directed to the commissioner or any person who received documents, materials, or other information while acting under the authority of the commissioner. The commissioner is authorized to use such documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The confidentiality and privilege created by this section and *RCW 42.17.31916 applies only to the commissioner, any person acting</i></p> |

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| | | | <p><i>under the authority of the commissioner, the national association of insurance commissioners and its affiliates and subsidiaries, regulatory and law enforcement officials of other states and nations, the federal government, and international authorities.</i></p> <p><i>(2) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner is permitted or required to testify in any private civil action concerning any confidential and privileged documents, materials, or information subject to subsection (1) of this section.</i></p> <p><i>(3) The commissioner:</i></p> <p><i>(a) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (1) of this section, with (i) the national association of insurance commissioners and its affiliates and subsidiaries, and (ii) regulatory and law enforcement officials of other states and nations, the federal government, and international authorities, if the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;</i></p> <p><i>(b) May receive documents, materials, or information, including otherwise either</i></p> |

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| | | | <p><i>confidential or privileged, or both, documents, materials, or information, from (i) the national association of insurance commissioners and its affiliates and subsidiaries, and (ii) regulatory and law enforcement officials of other states and nations, the federal government, and international authorities and shall maintain as confidential and privileged any document, material, or information received that is either confidential or privileged, or both, under the laws of the jurisdiction that is the source of the document, material, or information; and</i></p> <p><i>(c) May enter into agreements governing the sharing and use of information consistent with this subsection.</i></p> <p><i>(4) No waiver of an existing privilege or claim of confidentiality in the documents, materials, or information may occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (3) of this section.</i></p> <p><i>(5) Documents, materials, or information, which is either confidential or privileged, or both, which has been provided to the commissioner by (a) the national association of insurance commissioners and its affiliates and subsidiaries, (b) regulatory or law enforcement officials of other states and nations, the federal government, or international authorities, or (c)</i></p> |

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| | | | <p><i>agencies of this state, is confidential and privileged only if the documents, materials, or information is protected from disclosure by the applicable laws of the jurisdiction that is the source of the document, material, or information.</i></p> <p><i>(6) Working papers, documents, materials, or information produced by, obtained by, or disclosed to the commissioner or any other person in the course of a financial or market conduct examination are not required to be disclosed by the commissioner unless cited by the commissioner in connection with an agency action as defined in RCW 34.05.010(3). The commissioner shall notify a party that produced the documents, materials, or information five business days before disclosure in connection with an agency action. The notified party may seek injunctive relief in any Washington state superior court to prevent disclosure of any documents, materials, or information it believes is confidential or privileged. In civil actions between private parties or in criminal actions, disclosure to the commissioner under this section does not create any privilege or claim of confidentiality or waive any existing privilege or claim of confidentiality.</i></p> <p><i>(7)(a) After receipt of a public disclosure request, the commissioner shall disclose the documents, materials, or information under</i></p> |

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| | | | <p><i>subsection (6) of this section that relate to a financial or market conduct examination undertaken as a result of a proposed change of control of a nonprofit or mutual health insurer governed in whole or in part by chapter 48.31B or 48.31C RCW.</i></p> <p><i>(b) The commissioner is not required to disclose the documents, materials, or information in (a) of this subsection if:</i></p> <p><i>(i) The documents, materials, or information are otherwise privileged or exempted from public disclosure; or</i></p> <p><i>(ii) The commissioner finds that the public interest in disclosure of the documents, materials, or information is outweighed by the public interest in nondisclosure in that particular instance.</i></p> <p><i>(8) Any person may petition a Washington state superior court to allow inspection of information exempt from public disclosure under subsection (6) of this section when the information is connected to allegations of negligence or malfeasance by the commissioner related to a financial or market conduct examination. The court shall conduct an in-camera review after notifying the commissioner and every party that produced the information. The court may order the commissioner to allow the petitioner to have access to the information provided the petitioner maintains the</i></p> |

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| Assessment of costs of | (2) Nothing in the Act shall prevent or be construed as preventing the commissioner from | (k)(2) Nothing contained in this Act shall prevent or be construed as preventing the commissioner from | <p><i>confidentiality of the information. The petitioner must not disclose the information to any other person, except upon further order of the court. After conducting a regular hearing, the court may order that the information can be disclosed publicly if the court finds that there is a public interest in the disclosure of the information and the exemption of the information from public disclosure is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.</i></p> <p><i>RCW 48.03.040</i> <i>(6)(a) Upon the adoption of the examination report under subsection (4) of this section, the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of five days except that the order may be disclosed to the person examined. Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.</i></p> <p><i>(d) Nothing contained in this section requires the commissioner to disclose any information or records that would indicate or show the existence or content of any investigation or activity of a criminal justice agency.</i></p> <p><i>RCW 48.03.040</i> <i>(b) Nothing in this title prohibits the</i></p> |

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| examination | <p>disclosing the content of an examination report, preliminary examination report, or results, or any matter relating thereto, to the Insurance Department of this or any other state or agency of the federal government at any time, provided that the agency or office receiving the report or matters relating thereto agrees to hold it confidential and in a manner consistent with this Act.</p> <p>Section 6. J.(1) Where the reasonable and necessary costs of a market conduct examination are to be assessed against the insurer under examination, the fees shall be consistent with that otherwise authorized by law. The fees shall be itemized and bills shall be provided to the insurer on a monthly basis for review prior to submission for payment.</p> | <p>disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of this or any other state or agency of the federal government at any time, provided the agency or office receiving the report or matters relating thereto agrees to hold it confidential and in a manner consistent with this Act.</p> <p>Section 8. (k)(3) The Commissioner shall provide to an insurer subject to a final market conduct examination a written agreement described by Subsection (2) not later than the fifth day after the date the final market conduct examination is released under Subsection (2).</p> <p>Section 8. (l)(1) Where the reasonable and necessary costs and fees of a market conduct examination are to be assessed against the insurer under examination, such costs and fees shall be consistent with that otherwise authorized by law. Such costs and fees shall be itemized and bills shall be provided to the insurer on at least a monthly basis for review prior to submission for payment.</p> | <p><i>commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, so long as the agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this chapter.</i></p> <p>Sec. 7. (11)(a) The reasonable and necessary costs of a market conduct examination may be assessed against the insurer under examination. The fees shall be consistent with that otherwise authorized by RCW 48.03.060. The fees shall be itemized and bills shall be provided to the insurer on a monthly basis for review prior to submission for payment, or as otherwise provided by state law.</p> <p><i>RCW §48.03.060 (1) Examinations within this state of any insurer or self-funded multiple employer welfare arrangement as defined in RCW 48.125.010 domiciled or having its home offices in this state, other than a title insurer, made by the commissioner or the commissioner's examiners and employees shall, except as to fees, mileage, and expense incurred as to witnesses, be at the expense of the state.</i></p> |

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| | <p>Section 6. J.(2) The commissioner shall maintain active management and oversight of examination costs, including costs associated with the commissioner's own examiners and with retaining qualified contract examiners necessary to perform an on-site examination. To the extent the commissioner retains outside assistance, the commissioner shall adopt by rule written protocols that:</p> | <p>Section 8. (1)(2) The Commissioner shall maintain active management and oversight of examination costs and fees, including, but not limited to, costs and fees associated with the use of department personnel and examiners and with retaining qualified contract examiners necessary to perform an examination. To the extent the Commissioner retains outside assistance, the Commissioner must have in writing protocols that:</p> | <p>(2) Every other examination, whatsoever, or any part of the examination of any person domiciled or having its home offices in this state requiring travel and services outside this state, shall be made by the commissioner or by examiners designated by the commissioner and shall be at the expense of the person examined; but a domestic insurer shall not be liable for the compensation of examiners employed by the commissioner for such services outside this state.</p> <p>(3) When making an examination under this chapter, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the cost of which shall be borne by the person who is the subject of the examination, except as provided in subsection (1) of this section.</p> <p>Sec. 7. (11)(b) The commissioner shall maintain active management and oversight of examination costs, including costs associated with the commissioner's own examiners, and with retaining qualified contract examiners necessary to perform an on-site examination. Any agreement with a contract examiner shall: (i) Clearly identify the types of functions to be subject to outsourcing;</p> |

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| | <p>(a) clearly identify the types of functions to be subject to outsourcing;</p> <p>(b) provide specific time lines for completion of the outsourced review;</p> <p>(c) require disclosure of contract examiners' recommendations;</p> <p>(d) establish and use a dispute resolution or arbitration mechanism to resolve conflicts with insurers regarding examination fees; and</p> <p>(e) require disclosure of the terms of contracts with the outside consultants that will be used, specifically the fees and/or hourly rates that can be charged.</p> <p>(3) The commissioner shall review and affirmatively endorse detailed billings from the qualified contract examiner before the detailed billings are sent to the insurer.</p> <p>No comparable provisions.</p> | <p>(A) Clearly identify the types of functions to be subject to outsourcing;</p> <p>(B) Provide specific timelines for completion of the outsourced review;</p> <p>(C) Require disclosure of contract examiners' recommendations;</p> <p>(D) Establish and utilize a dispute resolution or arbitration mechanism to resolve conflicts with insurers regarding examination fees; and</p> <p>(E) Require disclosure of the terms of the contracts with the outside consultants that will be used, specifically the fees and/or hourly rates that can be charged.</p> <p>(3) The Commissioner shall review and affirmatively endorse detailed billings from the qualified contract examiner before the detailed billings are sent to the insurer.</p> <p>(4) The Commissioner may contract in accordance with applicable state contracting procedures, for such qualified contract actuaries and examiners as the Commissioner deems necessary due to the unavailability of qualified regular state employees to conduct a particular examination; provided that the compensation and per diem allowances paid to such contract persons shall not exceed one hundred twenty-five percent (125%) of the compensation and per diem allowances for examiners set forth in the guidelines adopted by the National Association of Insurance Commissioners.</p> | <p>(ii) Provide specific timelines for completion of the outsourced review;</p> <p>(iii) Require disclosure to the insurer of contract examiners' recommendations;</p> <p>(iv) Establish and use a dispute resolution or arbitration mechanism to resolve conflicts with insurers regarding examination fees; and</p> <p>(v) Require disclosure of the terms of the contracts with the outside consultants that will be used, specifically the fees and/or 20 hourly rates that can be charged.</p> <p>(c) The commissioner, or the commissioner's designee, shall review and affirmatively endorse detailed billings from the qualified contract examiner before the detailed billings are sent to the insurer.</p> <p><i>RCW §48.03.060</i></p> <p><i>(4) The person examined and liable therefor shall reimburse the state upon presentation of an itemized statement thereof, for the actual travel expenses of the commissioner's examiners, their reasonable living expense allowance, and their per diem compensation, including salary and the employer's cost of employee benefits, at a reasonable rate approved by the commissioner, incurred on account of the examination. Per diem salary and expenses for employees examining insurers</i></p> |

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| | | <p>(5) An insurer may not be required to provide reimbursement for examination costs and fees under Subsection (1), whether those costs and/or fees are incurred by market conduct surveillance personnel or qualified contract examiners, to the extent that those costs and/or fees exceed the costs and/or fees prescribed in the Market Conduct Examiners Handbook and any successor documents to that Handbook unless the Commissioner demonstrates that the costs and/or fees prescribed in the Handbook are inadequate under the circumstances of the examination.</p> | <p><i>domiciled outside the state of Washington shall be established by the commissioner on the basis of the National Association of Insurance Commissioner's recommended salary and expense schedule for zone examiners, or the salary schedule established by the Washington personnel resources board and the expense schedule established by the office of financial management, whichever is higher. A domestic title insurer shall pay the examination expense and costs to the commissioner as itemized and billed by the commissioner.</i></p> <p><i>The commissioner or the commissioner's examiners shall not receive or accept any additional emolument on account of any examination.</i></p> |
| <p>Confiden- tiality requirements</p> <p>Documents protected</p> | <p>Section 7.</p> <p>A. Except as otherwise provided by law, market conduct surveillance personnel shall have free and full access to all books and records, employees, officers and directors, as practicable, of the insurer during regular business hours. An insurer utilizing a third-party model or product for any of the activities under examination shall cause, upon the request</p> | <p>Section 9.</p> <p>(a) Except as otherwise provided by law, market conduct surveillance personnel shall have free and full access to all books and records, employees, officers and directors, as practicable, of the insurer during regular business hours. All documents, including but not limited to working papers, complaint logs, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in</p> | <p>Sec. 8.</p> <p>(1) Except as otherwise provided by law, market regulation personnel shall have free, convenient, and full access to all books, records, employees, officers, and directors, as practicable, of the insurer during regular business hours.</p> <p>(2) An insurer using a third-party model or product for any of the activities under examination shall cause, upon the request of</p> |

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| Privilege | <p>of market conduct surveillance personnel, the details of such models or products to be made available to such personnel. All documents, including but not limited to working papers, third party models or products, complaint logs, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in the course of any market conduct actions made pursuant to this Act, or in the course of market analysis by the commissioner of the market conditions of an insurer, or obtained by the NAIC as a result of any of the provisions of this Act, shall be confidential by law and privileged, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action.</p> <p><i>Drafting Note: If the state has enacted an insurer self-evaluative privilege law, the provisions of Section 7A may need to be revised to be consistent with that law.</i></p> | <p>the course of any market conduct actions made pursuant to this Act, or in the course of market analysis by the commissioner of the market conditions of an insurer, or obtained by the NAIC as a result of any of the provisions of this Act, shall be confidential by law and privileged, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action.</p> <p><i>Drafting Note: If the state has enacted an insurer self-evaluative privilege law, the provisions of Section 9(a) may need to be revised to be consistent with that law.</i></p> | <p>market regulation personnel, the details of such models or products to be made available to such personnel.</p> <p>Sec. 9.</p> <p>(1) All data and documents, including but not limited to working papers, third-party models or products, complaint logs, and copies thereof, created, produced, or obtained by or disclosed to the commissioner, the commissioner's authorized representative, or an examiner appointed by the commissioner in the course of any market actions or examinations made under this chapter, or in the course of market analysis by the commissioner of the market conditions of an insurer, or obtained by the NAIC as a result of any of the provisions of this chapter, shall be confidential by law and privileged, shall not be subject to the provisions of chapters 42.17 and 42.56 RCW, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.</p> |
| | <p>Section 7.</p> <p>B. No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section.</p> | <p>Section 9.</p> <p>(b) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section.</p> | <p>Sect. 8.</p> <p>(4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this chapter.</p> |
| Subpoenas | C. Market conduct surveillance personnel shall | (c) Market conduct surveillance personnel shall be | (5) Market regulation personnel shall be vested |

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| | be vested with the power to issue subpoenas and examine insurance company personnel under oath when the action is ordered by the commissioner pursuant to (cite the appropriate state authority). | vested with the power to issue subpoenas and examine insurance company personnel under oath when the action is ordered by the commissioner pursuant to (cite the appropriate state authority). | <p>with the power to issue subpoenas and examine insurance company personnel under oath when the action is requested by the commissioner under RCW 48.03.070.</p> <p><i>RCW §48.03.070</i></p> <p><i>(1) The commissioner may take depositions, may subpoena witnesses or documentary evidence, administer oaths, and examine under oath any individual relative to the affairs of any person being examined, or relative to the subject of any hearing or investigation: PROVIDED, That the provisions of RCW 34.05.446 shall apply in lieu of the provisions of this section as to subpoenas relative to hearings in rule-making and adjudicative proceedings.</i></p> <p><i>(2) The subpoena shall be effective if served within the state of Washington and shall be served in the same manner as if issued from a court of record.</i></p> <p><i>(3) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a court of record. Witness fees, mileage, and the actual expense necessarily incurred in securing attendance of witnesses and their testimony shall be itemized, and shall be paid by the person as to whom the examination is being made, or by the person if other than the commissioner, at whose request the hearing is held.</i></p> |

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| Permissive sharing | <p>D. Notwithstanding the provisions of Subsection A of this section, in order to assist in the performance of the commissioner's duties, the Commissioner may:</p> <p>(1) Share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Subsection A, with other state, federal and international regulatory agencies and law enforcement authorities and the NAIC and its affiliates and subsidiaries, provided that the recipient agrees to and has the legal authority to maintain the confidentiality and privileged status of the document, material, communication or other information;</p> <p>(2) Receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and</p> | <p>(d) Notwithstanding the provisions of Subsection A of this section, in order to assist in the performance of the commissioner's duties, the Commissioner may:</p> <p>(1) share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Subsection A, with other state, federal and international regulatory agencies and law enforcement authorities and the NAIC and its affiliates and subsidiaries, provided that the recipient agrees to and has the legal authority to maintain the confidentiality and privileged status of the document, material, communication or other information;</p> <p>(2) receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and</p> <p>(3) enter into agreements governing the sharing and use of information consistent with this subsection.</p> <p><i>Drafting Note: States may consider enacting an</i></p> | <p>(4) <i>Enforcement of subpoenas shall be in accord with RCW 34.05.588.</i></p> <p>(6) Notwithstanding the provisions of subsection (1) of this section, in order to assist in the performance of the commissioner's duties, the commissioner may: (a) Share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (1) of this section, with other state, federal, and international regulatory agencies and law enforcement authorities, and the NAIC and its affiliates and subsidiaries, provided that the recipient agrees to and has the legal authority to maintain the confidentiality and privileged status of the document, material, communication, or other information; (b) Receive documents, materials, communications, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC and its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and (c) Enter into agreements governing the sharing and use of</p> |

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| Self-audit documents | <p>(3) Enter into agreements governing the sharing and use of information consistent with this subsection.</p> <p><i>Drafting Note: States may consider enacting an insurer self-evaluation privilege law, which some believe encourages insurers' to identify and remedy insurance and other compliance problems. Such laws typically provide for a limited expansion of the protection against disclosure.</i></p> | <p><i>insurer self-evaluation privilege law, which some believe encourages insurers' to identify and remedy insurance and other compliance problems. Such laws typically provide for a limited expansion of the protection against disclosure.</i></p> | <p>information consistent with this subsection.</p> |
| | <p>No comparable provisions.</p> | <p>(e) notwithstanding the provisions of this section, no insurer shall be compelled to disclose a self-audit document or waive any statutory or common law privilege, but may voluntarily disclose such document to the Commissioner in response to any market conduct action or examination as provided in this section. For purposes of this subsection, "self-audit document" means a document that is prepared as a result of or in connection with an insurance compliance audit.</p> | <p>Sec. 9.</p> <p>(3) An insurance compliance self-evaluative audit document that has been provided to the commissioner is confidential by law and privileged, shall not be:</p> <ul style="list-style-type: none"> (a) Made public by the commissioner; (b) Subject to the provisions of chapters 42.17 and 42.56 RCW; (c) Subject to subpoena; and (d) Subject to discovery and admissible in evidence in any private civil action. <p>(4) The disclosure of any self-evaluative audit document to the commissioner or the commissioner's designee shall not constitute a waiver of any privilege that may otherwise apply.</p> |

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| Market conduct surveillance personnel | <p>Section 8.</p> <p>A. Market conduct surveillance personnel shall be qualified by education, experience and, where applicable, professional designations. The commissioner may supplement the in-house market conduct surveillance staff with qualified outside professional assistance if he/she determines that such assistance is necessary.</p> <p>B. Market conduct surveillance personnel have a conflict of interest, either directly or indirectly, if they are affiliated with the management, have been employed by, or own a pecuniary interest in the insurer subject to any examination under this Act. This section shall not be construed to automatically preclude an individual from being:</p> <p>(1) A policyholder or claimant under an insurance policy;</p> <p>(2) A grantee of a mortgage or similar instrument on the individual's residence from a</p> | <p>Section 10.</p> <p>(a) Market conduct surveillance personnel shall be qualified by education, experience and, where applicable, professional designations. The commissioner may supplement the in-house market conduct surveillance staff with qualified outside professional assistance if the Commissioner determines that such assistance is necessary.</p> <p>(b) Market conduct surveillance personnel have a conflict of interest, either directly or indirectly, if they are affiliated with the management, have been employed by, or own a pecuniary interest in the insurer subject to any examination under this Act. This section shall not be construed to automatically preclude an individual from being:</p> <p>(1) A policyholder or claimant under an insurance policy;</p> <p>(2) A grantee of a mortgage or similar instrument on the individual's residence from a regulated entity if done under customary terms and in the ordinary</p> | <p>Sec. 10.</p> <p>(1) Market regulation personnel shall be qualified by education, experience, or professional designations. The commissioner may supplement the in-house market regulation staff with qualified outside professional assistance if the commissioner determines that the assistance is necessary.</p> <p><i>RCW §48.03.060</i></p> <p>(3) <i>When making an examination under this chapter, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the cost of which shall be borne by the person who is the subject of the examination, except as provided in subsection (1) of this section.</i></p> <p>(2) Market regulation personnel have a conflict of interest, either directly or indirectly, if they are affiliated with the management, and have, within five years of any market action, been employed by, or own a pecuniary interest in the insurer, subject to any examination under this chapter. This section shall not be construed to automatically preclude an individual from being:</p> <p>(a) A policyholder or claimant under an insurance policy;</p> <p>(b) A grantee of a mortgage or similar instrument on the individual's residence from a</p> |

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| | <p>regulated entity if done under customary terms and in the ordinary course of business;</p> <p>(3) An investment owner in shares of regulated diversified investment companies; or</p> <p>(4) A settlor or beneficiary of a "blind trust" into which any otherwise permissible holdings have been placed.</p> | <p>course of business;</p> <p>(3) An investment owner in shares of regulated diversified investment companies; or</p> <p>(4) A settlor or beneficiary of a "blind trust" into which any otherwise permissible holdings have been placed.</p> | <p>regulated entity, if done under customary terms and in the ordinary course of business;</p> <p>(c) An investment owner in shares of regulated diversified 2 investment companies; or</p> <p>(d) A settlor or beneficiary of a "blind trust" into which any otherwise permissible holdings have been placed.</p> <p><i>RCW §48.03.065</i></p> <p><i>(1) No examiner may be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in a person subject to examination under this chapter. This section does not automatically preclude an examiner from being:</i></p> <p><i>(a) A policyholder or claimant under an insurance policy;</i></p> <p><i>(b) A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;</i></p> <p><i>(c) An investment owner in shares of regulated diversified investment companies; or</i></p> <p><i>(d) A settlor or beneficiary of a blind trust into which any otherwise impermissible holdings have been placed.</i></p> <p><i>(2) Notwithstanding the requirements of subsection (1) of this section, the commissioner may retain from time to time, on an individual</i></p> |

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| | | | <i>basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though those persons may from time to time be similarly employed or retained by persons subject to examination under this chapter.</i> |
| Alternative dispute resolution | No comparable provisions. | <p>Section 11.</p> <p>(a) Alternative dispute resolution is an option for resolution of differences.</p> <p>(b) Not later than the 30th day after receipt of a notice of examination under Section 8 (f), an insurer may request arbitration to contest the reason(s) given.</p> <p>(c) Not later than the 30th day after receipt of a final examination report under Section 8 (j)(D), an insurer may request arbitration of any matter related to the report which is in dispute, including but not limited to actions alleged to be outside the scope of the Commissioner's statutory authority; examination procedures, including conduct of the examiners; examination costs and fees; findings by the Commissioner of violations of the laws of this state or regulations issued by the Commissioner; and proposed fines or penalties to be assessed for such violations.</p> <p>(d) Arbitration shall be conducted by a board of arbitrators consisting of one arbitrator selected by the Commissioner, one arbitrator selected by the insurer,</p> | |

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| | | <p>and a third selected jointly by the other two arbitrators. Each arbitrator must be certified by a recognized arbitration organization, including but not limited to the American Arbitration Association, and must have at least six (6) years of prior related insurance experience. No arbitrator may be a current or former employee of the Department or of the insurer, unless both parties agree. American Arbitration Association rules shall be applied in any such arbitration. A decision is valid only upon affirmative vote of at least two of the arbitrators. The Commissioner and the insurer must treat the decision of the arbitrators as final. Unless otherwise ordered by the arbitrators, the parties shall each bear the costs of the arbitrator selected by it and shall share equally in the costs of the third arbitrator and of the arbitration.</p> <p>(e) Notwithstanding the provisions of subsections (a) and (b), an insurer may request a form of alternative dispute resolution other than arbitration, such as mediation, to contest the reason(s) given for the examination and/or any matter related to the report which is in dispute, including but not limited to actions alleged to be outside the scope of the Commissioner's statutory authority; examination procedures, including conduct of the examiners; examination costs; findings by the Commissioner of violations of the laws of this state or regulations issued by the Commissioner; and proposed fines or penalties to be assessed for such violations</p> | |

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| | | (f) Notwithstanding the provisions of Subsections (a), (b) and (c), an insurer may request a hearing in lieu of an alternative dispute resolution mechanism pursuant to [cite statutory reference for administrative procedure act]. Proceeding to hearing under this subsection in lieu of an alternative dispute resolution mechanism shall not be considered a failure to exhaust administrative remedies. | |
| Immunity for market conduct personnel | <p>Section 9.</p> <p>(a) No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives or an examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this Act.</p> <p>(b) No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this Act, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.</p> <p>(c) A person identified in Subsection A shall be</p> | <p>Section 12.</p> <p>(a) No cause of action shall arise nor shall any liability be imposed against the Commissioner, the Commissioner's authorized representatives or an examiner appointed by the Commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this Act.</p> <p>(b) No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the Commissioner or the Commissioner's authorized representative or examiner pursuant to an examination made under this Act, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.</p> <p>(c) A person identified in subsection (a) shall be</p> | <p>Sec. 11.</p> <p>(1) No cause of action shall arise, nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives, market regulation personnel, or an examiner appointed by the commissioner for any statements made, or conduct performed in good faith while carrying out the provisions of this chapter.</p> <p>(2) No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative, market regulation personnel, or examiner under an examination made under this chapter, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. 1</p> <p>(3) A person identified in subsection (1) of this</p> |

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| | <p>entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this Act and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.</p> <p>(d) This section does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified Subsection A.</p> | <p>entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this Act and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.</p> <p>(d) This section does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified subsection (a).</p> | <p>section is entitled to an award of attorneys' fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this chapter, and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.</p> <p>(4) This section does not abrogate or modify in any way any common law or statutory privilege or immunity before the effective date of this act.</p> <p><i>RCW §48.03.075</i></p> <p><i>(1) No cause of action may arise nor may any liability be imposed against the commissioner, the commissioner's authorized representatives, or an examiner appointed by the commissioner for statements made or conduct performed in good faith while carrying out this chapter.</i></p> <p><i>(2) No cause of action may arise nor may any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this chapter, if that act of communication or delivery was performed in good faith and without fraudulent intent or the intent to</i></p> |

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| | | | <p>deceive.</p> <p>(3) This section does not modify a privilege or immunity previously enjoyed by a person identified in subsection (1) of this section.</p> <p>(4) A person identified in subsection (1) of this section is entitled to an award of attorneys' fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other tort arising out of activities in carrying out this chapter and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.</p> <p>(5) If a claim is made or threatened of the sort described in subsection (1) of this section, the commissioner shall provide or pay for the defense of himself or herself, the examiner or representative, and shall pay a judgment or settlement, until it is determined that the person did not act in good faith or did act with fraudulent intent or the intent to deceive.</p> <p>(6) The immunity, indemnification, and other protections under this section are in addition to those now or hereafter existing under other law.</p> |

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| Subject | NAIC/NCOIL model provisions ¹ | Industry proposed model (as of 09/15/05) | Washington Office of Commissioner of Insurance "Z" draft bill (as of 02/06) ² |
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| Fines and penalties | <p>Section 10.</p> <p>A. Fines and penalties levied as a result of a market conduct action or other provisions of the state Insurance Law shall be consistent, reasonable and justified.</p> <p>B. The commissioner shall take into consideration actions taken by insurers that maintain membership in best-practice organizations that exist to promote high ethical standards of conduct in the marketplace, and the extent to which insurers maintain regulatory compliance programs to self assess, self-report and remediate problems detected and may include those considerations in determining the appropriate fines levied in accordance with Subsection A.</p> <p><i>Drafting Note: It is anticipated that best practice organizations such as the Insurance Marketplace Standards Association (IMSA) in the life insurance industry, and the National Committee for Quality Assurance (NCQA) and URAC in the health insurance industry, will play an important role in market conduct by expanding the frequency of voluntary insurer compliance programs. To the extent that these or similar organizations, through their compliance qualification process and procedures, can foster a culture of compliance, their contribution to market conduct</i></p> | <p>Section 13.</p> <p>(a) Fines and penalties levied as a result of a market conduct action or other provisions of the state Insurance Law shall be consistent, reasonable and justified.</p> <p>(b) The Commissioner shall take into consideration actions taken by insurers to maintain membership in, and comply with the standards of, best-practice organizations that promote high ethical standards of conduct in the marketplace, and the extent to which insurers maintain regulatory compliance programs to self assess, self-report and remediate problems detected and may include those considerations in determining the appropriate fines levied in accordance with subsection (a).</p> <p><i>Drafting Note: It is anticipated that best practice organizations such as the Insurance Marketplace Standards Association (IMSA) in the life insurance industry, and the National Committee for Quality Assurance (NCQA) and the Utilization Review Accreditation Commission (URAC) in the health insurance industry, will play an important role in market conduct by expanding the frequency of voluntary insurer compliance programs. To the extent that these or similar organizations, through their compliance qualification process and procedures, can foster a culture of compliance, their contribution to market conduct surveillance should be recognized. The NAIC Best Practices Organization White Paper</i></p> | <p>Sec. 12.</p> <p>(1) Fines and penalties levied as a result of a market action or examination shall be consistent, reasonable, and justified.</p> <p>(2) The commissioner shall take into consideration actions taken by insurers to maintain membership in, and comply with the standards of, best practices organizations, and the extent to which insurers maintain regulatory compliance programs to self-assess, self-report, and remediate problems detected, and may include those considerations in determining the appropriate fines or penalties levied in accordance with subsection (1) of this section.</p> |

Comparison of NAIC/NCOIL and Industry Proposed
Market Conduct Surveillance Model Laws

| Subject | NAIC/NCOIL model provisions ¹ | Industry proposed model (as of 09/15/05) | Washington Office of Commissioner of Insurance "Z" draft bill (as of 02/06) ² |
|---|--|--|--|
| | <i>surveillance should be recognized. The NAIC Best Practices Organization White Paper discusses the operational and performance standards for a best practices organization that seeks regulatory recognition for the entities the best practice organization accredits.</i> | <i>discusses the operational and performance standards for a best practices organization that seeks regulatory recognition for the entities the best practice organization accredits.</i> | |
| Participation in national market conduct databases | <p>Section 11.</p> <p>A. The commissioner shall collect and report market data to the NAIC's market information systems, including the Complaint Database System, the Examination Tracking System, and the Regulatory Information Retrieval System, or other comparable successor NAIC products as determined by the commissioner.</p> <p>B. Information collected and maintained by the Insurance Department shall be compiled in a manner that meets the requirements of the NAIC.</p> | <p>Section 14.</p> <p>(a) The Commissioner shall collect and report market data to the NAIC's market information systems, including the Complaint Database System, the Examination Tracking System, and the Regulatory Information Retrieval System, or other successor NAIC products as determined by the Commissioner. Complaints reported to the Complaint Database system shall be justified complaints that have been substantiated by appropriate personnel in the Insurance Department and by the insurer that is the subject of the complaint. In addition to complaint data, insurer specific information reported to the National Association of Insurance Commissioners for market analysis and market conduct purposes shall be substantiated by appropriate personnel in the department and verified by the insurer.</p> <p>(b) Information collected and maintained by the Insurance Department shall be compiled in a manner that meets the requirements of the NAIC.</p> | |
| Coordination with other | Section 12. The commissioner shall share information and | Section 15. The Commissioner shall share information and | Sec. 13. (1) The commissioner shall share information |

Comparison of NAIC/NCOIL and Industry Proposed
Market Conduct Surveillance Model Laws

| Subject | NAIC/NCOIL model provisions ¹ | Industry proposed model (as of 09/15/05) | Washington Office of Commissioner of Insurance "Z" draft bill (as of 02/06) ² |
|--|---|---|--|
| states through the NAIC | <p>coordinate the Insurance Department's market analysis and examination efforts with other states through the NAIC.</p> <p><i>Drafting Note: The NAIC Market Analysis Working Group is the national, confidential forum established by the NAIC to provide regulators with opportunities to share and coordinate the results of their market analysis programs and market conduct actions. States participating in the working group are expected to conduct their market analysis programs in a manner consistent with guidelines adopted by the NAIC. Adoption of this (or a similar) model law, coupled with expanded participation in the working group by states, will help foster the goal of domestic deference, thereby helping to fulfill the goal of making market conduct surveillance a national system of regulation that is more standard and uniform.</i></p> | <p>coordinate the Insurance Department's market analysis and examination efforts with other states through the NAIC.</p> <p><i>Drafting Note: The NAIC Market Analysis Working Group is the national, confidential forum established by the NAIC to provide regulators with opportunities to share and coordinate the results of their market analysis programs and market conduct actions. States participating in the working group are expected to conduct their market analysis programs in a manner consistent with guidelines adopted by the NAIC. Adoption of this (or a similar) model law, coupled with expanded participation in the working group by states, will help foster the goal of domestic deference, thereby helping to fulfill the goal of making market conduct surveillance a national system of regulation that is more standard and uniform.</i></p> | <p>and coordinate the commissioner's market analysis, market actions, and examination efforts with other state insurance regulators. Such matters will be coordinated in accordance with guidelines adopted by the NAIC.</p> |
| Additional duties of commissioner | <p>Section 13.</p> <p>A. At least once per year, or more frequently if deemed necessary, the commissioner shall provide in an appropriate manner to insurers and other entities subject to the scope of (cite Insurance Code citation) information on new laws and regulations, enforcement actions and other information the commissioner deems pertinent to ensure compliance with market</p> | <p>Section 16.</p> <p>(a) At least once per year, or more frequently if deemed necessary, the Commissioner shall provide in an appropriate manner to insurers and other entities subject to the scope of (cite Insurance Code citation) information on new laws and regulations, enforcement actions and other information the Commissioner deems pertinent to ensure compliance with market conduct requirements. The failure of the</p> | <p>Sec. 14.</p> <p>The commissioner shall designate a specific person or persons within the commissioner's office whose responsibilities shall include the receipt of information from employees of insurers and licensed entities concerning violations of laws, rules, or regulations by employers, as defined in this chapter. These persons shall be provided with proper training</p> |

Comparison of NAIC/NCOIL and Industry Proposed
Market Conduct Surveillance Model Laws

| Subject | NAIC/NCOIL model provisions ¹ | Industry proposed model (as of 09/15/05) | Washington Office of Commissioner of Insurance "Z" draft bill (as of 02/06) ² |
|---------|--|---|--|
| | <p>conduct requirements. The failure of the commissioner to provide information shall not be a defense for an insurer that fails to comply with any insurance law of this state.</p> <p>B. The commissioner shall designate a specific person or persons within the Insurance Department whose responsibilities shall include the receipt of information from employees of insurers and licensed entities concerning violations of laws, rules or regulations by employers, as defined in this section. Such person or persons shall be provided with proper training on the handling of such information, which shall be deemed a confidential communication for the purposes of this section.</p> <p><i>Drafting Note: The provisions of Subsection B relating to the designation by the Commissioner of an employee to receive "whistleblower" type complaints may be added to an existing whistleblower statute, added as drafted above or omitted.</i></p> <p><i>Drafting Note: States that choose to impose additional duties or responsibilities on their own Insurance Commissioners may insert additional subdivisions to this section.</i></p> | <p>Commissioner to provide any such information shall not be a defense for any insurer that fails to comply with any insurance law of this state. The Commissioner may provide the required notice in an electronic format that is designed to give insurers and other entities adequate notice.</p> <p>(b) The Commissioner shall designate a specific person or persons within the Insurance Department whose responsibilities shall include the receipt of information from employees of insurers and licensed entities concerning violations of laws, rules or regulations by employers, as defined in this section. Such person or persons shall be provided with proper training on the handling of such information, which shall be deemed a confidential communication for the purposes of this section.</p> <p><i>Drafting Note 1: The provisions of subsection (b) relating to the designation by the Commissioner of an employee to receive "whistleblower" type complaints may be added to an existing whistleblower statute, added as drafted above or omitted.</i></p> <p><i>Drafting Note 2: States that choose to impose additional duties or responsibilities on their own Insurance Commissioners may insert additional subdivisions to this section.</i></p> | <p>on the handling of such information. The information shall be confidential and not open to public inspection.</p> |

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS UNIFORM MARKET CONDUCT SURVEILLANCE MODEL LAW

This document includes revisions agreed upon by ACLI, AIA, AHIP, PCIAA, NAMIC, Blue Cross Blue Shield Association, January 2006. The Model is based on the Model adopted unanimously by the NCOIL Executive Committee on February 27, 2004, amended on July 16, 2004 and adopted by the National Association of Insurance Commissioners (NAIC) on September 12, 2004.

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Section 1. Short Title

This Act shall be known and may be cited as the *Uniform Market Conduct Surveillance Law*.

Section 2. Purpose/Legislative Intent

The purpose of this act is to establish a framework for Insurance Department market conduct actions, including:

- Processes and systems for identifying, assessing and prioritizing market conduct problems that have a substantial adverse impact on consumers, policyholders and claimants;
- Market conduct actions by a commissioner to substantiate such market conduct problems and a means to remedy significant market conduct problems; and
- Procedures to communicate and coordinate market conduct actions among states to foster the most efficient and effective use of resources.

Section 3. Scope

Notwithstanding any other grant of authority to the Commissioner to regulate the business of insurance in this state, market analysis, market conduct actions and market conduct examinations shall be undertaken solely as provided in this Act. Authority not expressly delegated to the Commissioner under this Act shall not be inferred.

Section 4. Definitions

Drafting Note: If necessary, definitions of "insurer" and "insurance department" (or other appropriate regulatory agency) may be added. If a state has the authority to conduct market conduct examinations of third party administrators or other non-insurer entities, the appropriate provisions of this Model Act may be amended to extend its requirements and protections to such entities.

- (a) "Commissioner" means the chief insurance regulatory official of the state.

Drafting note: Where the word "commissioner" appears in the Model Act, the appropriate designation for the chief insurance regulatory official of the state, if different, should be substituted.

- (b) "Complaint" means a written or documented oral communication primarily expressing a grievance, meaning an expression of dissatisfaction. For health companies, a grievance is a written complaint submitted by or on behalf of a covered person.
- (c) "Comprehensive Market Conduct Examination" means a review of one or more lines of business of an insurer domiciled in this state that is not conducted for cause. The term includes a review of rating, tier classification, underwriting, policyholder service, claims, marketing and sales, producer licensing, complaint handling practices, or compliance procedures and policies.
- (d) "Market Analysis" means a process whereby market conduct surveillance personnel collect and analyze information from filed schedules, surveys, required reports and other sources in order to develop a baseline understanding of the marketplace and to identify patterns or practices of insurers that deviate significantly from the norm or that may pose a potential risk to the insurance consumer.
- (e) "Market Conduct Action" means any of the full range of activities that the Commissioner may initiate to assess and address the market practices of insurers licensed to do business in this state, beginning with market analysis and extending to targeted examinations. The Commissioner's activities to resolve an individual consumer complaint or other report of a specific instance of misconduct are not market conduct actions for purposes of this act.
- (f) "Market Conduct Examination" means the examination of the insurance operations of an insurer licensed to do business in this state in order to evaluate compliance with the applicable laws and regulations of this state. A market conduct examination may be either a comprehensive examination or a targeted examination. A market conduct examination is separate and distinct from a financial examination of an insurer performed pursuant to [cite section], but may be conducted at the same time.'

- (g) "Market conduct uniform examination procedures" means the set of guidelines developed and adopted by the National Association of Insurance Commissioners designed to be used by market conduct surveillance personnel in conducting an examination.
- (h) "Market Conduct Surveillance Personnel" means those individuals employed or contracted by the Commissioner to collect, analyze, review or act on information on the insurance marketplace which identifies patterns or practices of insurers.
- (i) "National Association of Insurance Commissioners" (NAIC) means the organization of insurance regulators from the 50 states, the District of Columbia and the five (5) U.S. territories.

Drafting Note: If statutory drafting conventions require further description, the following language should be used: "Its mission is to assist insurance regulators in protecting the public interest, promoting competitive markets, facilitating the fair and equitable treatment of insurance consumers, promoting the reliability, solvency and financial solidity of insurance institutions, and supporting and improving state regulation of insurance."

- (1) "NAIC Market Conduct Examiner's Handbook" means the set of guidelines developed and adopted by the NAIC, which documents established practices to be used by market conduct surveillance personnel in developing and executing an examination.
 - (2) "NAIC Market Conduct Uniform Examination Procedures" means the set of guidelines developed and adopted by the NAIC designed to be used by market conduct surveillance personnel in conducting an examination.
 - (3) "NAIC Standard Data Request" means the set of field names and descriptions developed and adopted by the NAIC for use by market conduct surveillance personnel in a market conduct action.
- (j) "Qualified Contract Examiner" means a person under contract to the Commissioner, who is qualified by education, experience and, where applicable, professional designations, to perform market conduct actions.
- (k) "Standard data request" means the set of field names and descriptions developed and adopted by the National Association of Insurance Commissioners for use by market conduct surveillance personnel in a market conduct action.
- (l) "Targeted Examination" means a focused exam, based on the results of market analysis indicating the need to review either a specific line of business or specific business practices, including but not limited to underwriting and rating, marketing and sales, complaint handling operations/management, advertising materials, licensing, policyholder services, non-forfeitures, claims handling, or policy forms and filings. A targeted examination may be conducted by desk examination or by an on-site examination.
 - (1) "Desk Examination" means an examination that is conducted by an examiner at a location other than the insurer's premises. A desk examination is usually performed at the Insurance Department's offices with the insurer providing requested documents by hard copy, microfiche, discs or other electronic media, for review.

- (2) "On-site Examination" means an examination conducted at the insurer's home office or the location where the records under review are stored.

Section 5. Domestic Responsibility and Deference to Other States

- (a) The Commissioner is responsible for conducting market conduct examinations on insurers domiciled in the state. The Commissioner may delegate that responsibility to the Commissioner of another state, provided such Commissioner agrees to accept the delegated responsibility. If the Commissioner elects to delegate responsibility for examining an insurer, the Commissioner shall accept a report of the examination prepared by the Commissioner to whom the responsibility has been delegated.
- (b) If the insurer to be examined is part of an insurance holding company system, the Commissioner may also seek to simultaneously examine any affiliate of the insurer under common control and management which are licensed to write the same lines of business in this state, provided the affiliate and the Commissioner of their state of domicile consent to such examination.
- (c) In lieu of conducting a market conduct examination of an insurer licensed but not domiciled in this state, the Commissioner shall accept a report of a market conduct examination on such insurer prepared by the Commissioner of the insurer's state of domicile or another state, provided:
- (1) The laws of that state applicable to the subject of the examination are substantially similar to those of this state; and
 - (2) The examining state has a market conduct surveillance system that the Commissioner deems comparable to the market conduct surveillance system required under this Act.
- (d) The Commissioner's determination under Subsection (c) (2) is discretionary with the Commissioner and is not subject to appeal.
- (e) Subject to a determination under Subsection (c), if a market conduct examination conducted by another state results in a finding that an insurer should modify a specific practice or procedure, the Commissioner shall accept documentation that the insurer has made a similar modification in this state, in lieu of initiating a market conduct action or examination related to that practice or procedure.

Drafting note: It is anticipated that as states adopt this NCOIL model law, or similar statutes, the practice of domestic deference and other appropriate forms of interstate collaboration, whereby states rely on market conduct examinations performed by other states, will reduce and eventually eliminate unnecessary duplication of effort in the area of market conduct regulation.

Drafting note: If the NAIC moves to an accreditations process for market conduct activity, the Model might be amended to require that a state shall accept the comprehensive examination of another state only if that state is accredited.

Section 6. Market Analysis Procedures

- (a) (1) The Commissioner shall gather information from data currently available to the Insurance Department, as well as surveys and required reporting requirements, information collected by the NAIC, information from within and outside the insurance industry from objective sources,

information from websites for insurers, agents and other organizations and information from other sources, provided they are published at least annually in a bulletin or regulation, prior to use.

- (3) Such information shall be analyzed in order to develop a baseline understanding of the marketplace and to identify for further review insurers or practices that deviate significantly from the norm or that may pose a potential risk to the insurance consumer.
- (4) The Commissioner shall use the following policies and procedures in performing the analysis required under this section:
 - (A) Maintain an ongoing Market Analysis Chief (MAC);
 - (B) Establish a systematic interdivisional communication program;
 - (C) Identify key lines of business for systematic review;
 - (D) Identify companies for further analysis based on available information, including but not limited to:
 - (i) Complaint activity on justified complaints that indicates a potential harm to consumers;
 - (ii) Significant changes in Direct Written Premium volume; and
 - (iii) Significant changes or anomalies in reserves.

(b) After completion of any level of Market Analysis, the state shall contact the insurer to verify the analysis prior to further market conduct action:

(A) Insurer specific information that is used and relied upon by the department when developing the baseline analysis and identifying insurers or practices for further review shall be substantiated by appropriate personnel in the department and verified by the insurer.

(B) The Commissioner may only utilize information from NAIC databases for market analysis provided that the Commissioner verifies the information directly with that state prior to its consideration.

(C) Except as otherwise specifically provided, the department or the Commissioner, as applicable, may not require an insurer to report information in a manner that is inconsistent with the records the insurer maintains in the ordinary course of business or can create at a reasonable expense or effort.

- (c) If the Commissioner determines, as a result of market analysis, that further inquiry into a particular insurer or practice is needed, the following continuum of market conduct actions shall be considered prior to conducting a targeted market conduct examination. The action selected shall be made known to the insurer in writing if the action involves insurer participation or response. These actions may include, but are not limited to:

- (1) Correspondence with Insurer;

- (2) Insurer Interviews;
- (3) Information Gathering;
- (4) Policy and Procedure Reviews;
- (5) Interrogatories;
- (6) Review of Insurer Self-Evaluation (if not subject to a privilege of confidentiality) and compliance programs, including membership in a best-practice organization.

Drafting note: A best practice organization has as its central mission the promotion of high ethical standards in the marketplace.

- (d) The Commissioner shall select a market conduct action that is cost effective for the Insurance Department and the insurer, while still protecting the insurance consumer.
- (e) The Commissioner shall take those steps reasonably necessary to eliminate requests for information that duplicate or conflict with information provided as part of an insurer's annual financial statement, the annual market conduct statement of the National Association of Insurance Commissioners, or other required schedules, surveys, or reports that are regularly submitted to the Commissioner, or with data requests made by other states if that information is available to the Commissioner, unless the information is state specific, and coordinate market conduct actions and findings with other states.
- (f) The causes or conditions, if identified through market analysis, that may trigger a targeted examination are:
 - (A) Information obtained from a market conduct annual statement, market survey or report of financial examination indicating potential fraud, that the insurer is conducting the business of insurance without a license or is engaged in a potential pattern of unfair trade practice in violation of [cite statutory reference for the Unfair Trade and Claims Practices Acts].
 - (B) A number of justified complaints against the insurer or a justified complaint ratio sufficient to indicate potential fraud, conducting the business of insurance without a license, or a potential pattern of unfair trade practice in violation of [cite statutory reference for the Unfair Trade and Claims Practices Acts]. For the purposes of this section, a complaint ratio shall be determined for each line of business.
 - (C) Information obtained from other objective sources, such as published advertising materials indicating potential fraud, conducting the business of insurance without a license, or evidencing a potential pattern of unfair trade practice in violation of [cite appropriate statutory reference for the state's Unfair Trade and Claims Practices Act].

Section 7. Protocols for Market Conduct Actions

- (a) Market conduct actions taken as a result of a market analysis shall focus on the general business practices and compliance activities of insurers, rather than identifying infrequent or unintentional random errors that do not cause significant consumer harm.
- (b) (1) The Commissioner is authorized to determine the frequency and timing of such market conduct actions. The timing shall depend upon the specific market conduct action to be initiated, unless extraordinary circumstances indicating a risk to consumers require immediate action.

(2) If the Commissioner has information that more than one insurer is engaged in common practices that may violate statute or regulations, the Commissioner may schedule and coordinate multiple examinations simultaneously.
- (b) The insurer shall be notified of any practice or procedure which is to be the subject of a market conduct action and shall be given an opportunity to resolve matters that arise as a result of a market analysis to the satisfaction of the Commissioner before any additional market conduct actions are taken against the insurer. If the insurer has modified such practice or procedure as a result of a market conduct action taken by the Commissioner of another state, the Commissioner shall accept documentation that the insurer has satisfactorily modified the practice or procedure and made similar modification to such practice or procedure in this state.
- (c) For any change made to an NAIC work product referenced in this Act, the Commissioner shall adopt by regulation procedures and documents that are substantially similar to the NAIC work products defined or referenced in this Act. Market analysis, market conduct actions and market conduct examinations shall be performed in accordance with such regulation. If any subsequent amendment to an NAIC work product defined or referenced in this Act materially changes the way in which market analysis, market conduct actions or market conduct examinations are performed, the Commissioner shall give notice and provide interested parties with an opportunity for a public hearing pursuant to (cite the appropriate state administrative procedures act) before such amendment is incorporated into the regulation. If no hearing is held, the Commissioner shall use the version of such work product most recently developed and adopted by the NAIC.
- (e) Except as otherwise provided by law, every company or person from whom information is sought, its officers, directors and agents shall provide the Commissioner convenient and free access to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the company during normal business hours. The officers, directors, employees, insurance producers and agents of the company or person must facilitate market conduct actions and market conduct examinations so far as it is in their power to do so.

Section 8. Protocols for Market Conduct Examinations

- (a) When market analysis identifies a pattern of conduct or practice by an insurer which requires further investigation, and other market conduct actions identified in section 6 (c) are not appropriate, the Commissioner has the discretion to conduct targeted market conduct examinations in accordance with the NAIC Market Conduct Uniform Examination Procedures and the Market Conduct Examiners Handbook

- (b) If the insurer to be examined is not a domestic insurer, the Commissioner shall coordinate the examination with the insurance Commissioner of the state in which the insurer is organized.
- (c) Concomitant with the notification requirements established in subsection (f) of this section, the commissioner shall post notification on the NAIC *Examination Tracking System*, or successor NAIC product as determined by the Commissioner, that a market conduct examination has been scheduled.
- (d) The Commissioner may not conduct a comprehensive market conduct examination more frequently than once every five years. The Commissioner may waive conducting a comprehensive market conduct examination based on market analysis.
- (e) (1) Prior to commencement of an examination, market conduct surveillance personnel shall prepare a work plan consisting of the following:
 - (A) The name and address of the insurer(s) being examined;
 - (B) The name and contact information of the examiner-in-charge;
 - (C) The justification(s) for a targeted examination;
 - (D) The scope of an examination;
 - (E) The date the on-site examination is scheduled to begin;
 - (F) Identification of any non-insurance department personnel who will assist in the examination;
 - (G) A time estimate for the examination;
 - (H) A budget for the examination if the cost of the examination is billed to company; and
 - (I) An identification of factors that will be included in the billing if the cost of the examination is billed to company.
- (2) An examination may be conducted through a desk examination or an on-site examination. Examinations shall, to the extent feasible, utilize desk examinations and data requests prior to an on-site examination.
- (3) The department shall use the NAIC Standard Data Request (or successor product, adopted by regulation, that is substantially similar to the foregoing NAIC product).
- (f) Announcement of the examination shall be sent to the insurer and posted on the NAIC's *Examination Tracking System* (or successor NAIC product, as determined by the commissioner) as soon as possible but in no case later than 60 days before the estimated commencement of an examination, except where the exam is conducted in response to extraordinary circumstances as described in Section 7(b)(1). Such announcement sent to the insurer shall contain the examination work plan and a request for the insurer to name its examination coordinator.

- (g) If a targeted examination is expanded beyond the reasons provided to the insurer in the notice of the examination required under this Section, the Commissioner shall provide written notice to the insurer, explaining the extent of the expansion and the reasons for the expansion. The department shall provide a revised work plan to the insurer before the beginning of any significantly expanded examination.
- (h) The Commissioner shall conduct a pre-examination conference with the insurer examination coordinator and key personnel to clarify expectations no later than thirty (30) days prior to commencement of the examination.
- (i) Prior to the conclusion of an examination, the individual among the market conduct surveillance personnel who is designated as the examiner-in-charge shall schedule an exit conference with the insurer.
- (j) (1) The commissioner shall adhere to the following timeline, unless a mutual agreement is reached with the insurer to modify the timeline:
 - (A) If the Commissioner elects to issue a report, a draft examination report shall be delivered to the insurer within sixty (60) days of the completion of the examination. Completion of the examination shall be defined as the date the Commissioner confirms in writing that the examination is completed.
 - (B) The insurer must respond with written comments within 30 days of receipt of the draft report.
 - (C) The department shall make a good faith effort to resolve issues informally and where the Commissioner determines that such examination report is required, shall prepare a final report within 30 days of receipt of the insurer's written comments, unless a mutual agreement is reached to extend the deadline.
 - (D) The commissioner shall make corrections and other changes, as appropriate to reflect resolution of disputed matters, and shall issue the report to the insurer. The insurer shall, within 30 days, accept the final report, accept the findings of the report, file written comments, request an alternative dispute resolution under Section 11 or request a hearing. An additional 30 days shall be allowed if agreed to by the Commissioner and the insurer. Any such hearing request must be made in writing and must follow [insert reference to appropriate administrative procedure act].
- (3) States shall include the company's response in the final report. The response may be included as an appendix or in the text of the examination report. The company is not obligated to submit a response. Individuals involved in the examination should not be named in either the report or the response except to acknowledge their involvement.

Drafting Note: States should rely upon the NAIC Market Conduct Examiners Handbook to establish specific standards for examination reports.

- (k)(1) Upon adoption of the examination report pursuant to subsection (j), the Commissioner shall continue to hold the content of the examination report as private and confidential, except to the extent provided for in paragraph (2) of this subsection. Documents and information obtained during an alternative dispute resolution under Section 9, and the results of such action, shall be

afforded the same protection. No such report or information shall be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private action. This section may not be construed to limit the Commissioner's authority to use any final or preliminary market conduct examination report, any examiner or company work papers or other documents, or any other information discovered or developed during the course of an examination in the furtherance of any legal or regulatory action that the Commissioner, in the Commissioner's sole discretion may deem appropriate.

(2) Nothing contained in this Act shall prevent or be construed as preventing the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of this or any other state or agency of the federal government at any time, provided the agency or office receiving the report or matters relating thereto agrees to hold it confidential and in a manner consistent with this Act.

(3) The Commissioner shall provide to an insurer subject to a final market conduct examination a written agreement described by Subsection (2) not later than the fifth day after the date the final market conduct examination is released under Subsection (2).

(1) (1) Where the reasonable and necessary costs and fees of a market conduct examination are to be assessed against the insurer under examination, such costs and fees shall be consistent with that otherwise authorized by law. Such costs and fees shall be itemized and bills shall be provided to the insurer on at least a monthly basis for review prior to submission for payment.

(2) The Commissioner shall maintain active management and oversight of examination costs and fees, including, but not limited to, costs and fees associated with the use of department personnel and examiners and with retaining qualified contract examiners necessary to perform an examination. To the extent the Commissioner retains outside assistance, the Commissioner must have in writing protocols that:

(A) Clearly identify the types of functions to be subject to outsourcing;

(B) Provide specific timelines for completion of the outsourced review;

(C) Require disclosure of contract examiners' recommendations;

(D) Establish and utilize a dispute resolution or arbitration mechanism to resolve conflicts with insurers regarding examination fees; and

(E) Require disclosure of the terms of the contracts with the outside consultants that will be used, specifically the fees and/or hourly rates that can be charged.

(5) The Commissioner shall review and affirmatively endorse detailed billings from the qualified contract examiner before the detailed billings are sent to the insurer.

(6) The Commissioner may contract in accordance with applicable state contracting procedures, for such qualified contract actuaries and examiners as the Commissioner deems necessary due to the unavailability of qualified regular state employees to conduct a particular examination; provided that the compensation and per diem allowances paid to such contract persons shall not exceed one hundred twenty-five percent (125%) of the compensation and per diem

allowances for examiners set forth in the guidelines adopted by the National Association of Insurance Commissioners.

- (7) An insurer may not be required to provide reimbursement for examination costs and fees under Subsection (1), whether those costs and/or fees are incurred by market conduct surveillance personnel or qualified contract examiners, to the extent that those costs and/or fees exceed the costs and/or fees prescribed in the Market Conduct Examiners Handbook and any successor documents to that Handbook unless the Commissioner demonstrates that the costs and/or fees prescribed in the Handbook are inadequate under the circumstances of the examination.

Section 9. Confidentiality Requirements

- (a) Except as otherwise provided by law, market conduct surveillance personnel shall have free and full access to all books and records, employees, officers and directors, as practicable, of the insurer during regular business hours. All documents, including but not limited to working papers, complaint logs, and copies thereof, created, produced or obtained by or disclosed to the Commissioner or any other person in the course of any market conduct actions made pursuant to this Act, or in the course of market analysis by the commissioner of the market conditions of an insurer, or obtained by the NAIC as a result of any of the provisions of this Act, shall be confidential by law and privileged, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action.

Drafting Note: If the state has enacted an insurer self-evaluative privilege law, the provisions of Section 9 (a) may need to be revised to be consistent with that law.

- (b) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commissioner under this section.
- (c) Market conduct surveillance personnel shall be vested with the power to issue subpoenas and examine insurance company personnel under oath when such action is ordered by the Commissioner pursuant to (cite the appropriate state authority).
- (d) Notwithstanding the provisions of paragraph (a) of this subsection, in order to assist in the performance of the Commissioner's duties, the Commissioner may:
- (1) Share documents, materials or other information, including the confidential and privileged documents, materials or information subject to paragraph (a), with other state, federal and international regulatory agencies and law enforcement authorities and the NAIC and its affiliates and subsidiaries, provided that the recipient agrees to and has the legal authority to maintain the confidentiality and privileged status of the document, material, communication or other information;
 - (2) Receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged

under the laws of the jurisdiction that is the source of the document, material or information;
and

- (3) Enter into agreements governing the sharing and use of information consistent with this subsection.
- (e) Notwithstanding the provisions of this section, no insurer shall be compelled to disclose a self-audit document or waive any statutory or common law privilege, but may voluntarily disclose such document to the Commissioner in response to any market conduct action or examination as provided in this section. For purposes of this subsection, "self-audit document" means a document that is prepared as a result of or in connection with an insurance compliance audit.

Drafting Note: States may consider enacting an insurer self-evaluation privilege law, which some believe encourages insurers' to identify and remedy insurance and other compliance problems. Such laws typically provide for a limited expansion of the protection against disclosure.

Section 10. Market Conduct Surveillance Personnel

- (a) Market conduct surveillance personnel shall be qualified by education, experience and, where applicable, professional designations. The Commissioner may supplement the in-house market conduct surveillance staff with qualified outside professional assistance if the Commissioner determines that such assistance is necessary.
- (b) Market conduct surveillance personnel have a conflict of interest, either directly or indirectly, if they are affiliated with the management, have been employed by, or own a pecuniary interest in the insurer subject to any examination under this Act. This section shall not be construed to automatically preclude an individual from being:
- (1) A policyholder or claimant under an insurance policy;
 - (2) A grantee of a mortgage or similar instrument on the individual's residence from a regulated entity if done under customary terms and in the ordinary course of business;
 - (3) An investment owner in shares of regulated diversified investment companies; or
 - (4) A settlor or beneficiary of a "blind trust" into which any otherwise permissible holdings have been placed.

Section 11. Alternative Dispute Resolution

- (a) Alternative dispute resolution is an option for resolution of differences.
- (b) Not later than the 30th day after receipt of a notice of examination under Section 8 (f), an insurer may request arbitration to contest the reason(s) given.
- (c) Not later than the 30th day after receipt of a final examination report under Section 8 (j)(D), an insurer may request arbitration of any matter related to the report which is in dispute, including but not limited to actions alleged to be outside the scope of the Commissioner's statutory authority; examination procedures, including conduct of the examiners; examination costs and fees; findings by

the Commissioner of violations of the laws of this state or regulations issued by the Commissioner; and proposed fines or penalties to be assessed for such violations.

(d) Arbitration shall be conducted by a board of arbitrators consisting of one arbitrator selected by the Commissioner, one arbitrator selected by the insurer, and a third selected jointly by the other two arbitrators. Each arbitrator must be certified by a recognized arbitration organization, including but not limited to the American Arbitration Association, and must have at least six (6) years of prior related insurance experience. No arbitrator may be a current or former employee of the Department or of the insurer, unless both parties agree. American Arbitration Association rules shall be applied in any such arbitration. A decision is valid only upon affirmative vote of at least two of the arbitrators. The Commissioner and the insurer must treat the decision of the arbitrators as final. Unless otherwise ordered by the arbitrators, the parties shall each bear the costs of the arbitrator selected by it and shall share equally in the costs of the third arbitrator and of the arbitration.

(e) Notwithstanding the provisions of subsections (a) and (b), an insurer may request a form of alternative dispute resolution other than arbitration, such as mediation, to contest the reason(s) given for the examination and/or any matter related to the report which is in dispute, including but not limited to actions alleged to be outside the scope of the Commissioner's statutory authority; examination procedures, including conduct of the examiners; examination costs; findings by the Commissioner of violations of the laws of this state or regulations issued by the Commissioner; and proposed fines or penalties to be assessed for such violations.

(f) Notwithstanding the provisions of Subsections (a), (b) and (c), an insurer may request a hearing in lieu of an alternative dispute resolution mechanism pursuant to [cite statutory reference for administrative procedure act]. Proceeding to hearing under this subsection in lieu of an alternative dispute resolution mechanism shall not be considered a failure to exhaust administrative remedies.

Section 12. Immunity for Market Conduct Surveillance Personnel

- (a) No cause of action shall arise nor shall any liability be imposed against the Commissioner, the Commissioner's authorized representatives or an examiner appointed by the Commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this Act.
- (b) No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the Commissioner or the Commissioner's authorized representative or examiner pursuant to an examination made under this Act, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.
- (c) A person identified in subsection (a) shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this Act and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.
- (d) This section does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified subsection (a).

Section 13. Fines and Penalties

- (a) Fines and penalties levied as a result of a market conduct action or other provisions of the state Insurance Law shall be consistent, reasonable and justified.
- (b) The Commissioner shall take into consideration actions taken by insurers to maintain membership in, and comply with the standards of, best-practice organizations that promote high ethical standards of conduct in the marketplace, and the extent to which insurers maintain regulatory compliance programs to self assess, self-report and remediate problems detected and may include those considerations in determining the appropriate fines levied in accordance with subsection (a).

Drafting Note: It is anticipated that best practice organizations such as the Insurance Marketplace Standards Association (IMSA) in the life insurance industry, and the National Committee for Quality Assurance (NCQA) and the Utilization Review Accreditation Commission (URAC) in the health insurance industry, will play an important role in market conduct by expanding the frequency of voluntary insurer compliance programs. To the extent that these or similar organizations, through their compliance qualification process and procedures, can foster a culture of compliance, their contribution to market conduct surveillance should be recognized. The NAIC Best Practices Organization White Paper discusses the operational and performance standards for a best practices organization that seeks regulatory recognition for the entities the best practice organization accredits.

Section 14. Participation in National Market Conduct Databases

- (a) The Commissioner shall collect and report market data to the NAIC's market information systems, including the Complaint Database System, the Examination Tracking System, and the Regulatory Information Retrieval System, or other successor NAIC products as determined by the Commissioner. Complaints reported to the Complaint Database system shall be justified complaints that have been substantiated by appropriate personnel in the Insurance Department and by the insurer that is the subject of the complaint. In addition to complaint data, insurer specific information reported to the National Association of Insurance Commissioners for market analysis and market conduct purposes shall be substantiated by appropriate personnel in the department and verified by the insurer.
- (b) Information collected and maintained by the Insurance Department shall be compiled in a manner that meets the requirements of the NAIC

Section 15. Coordination with Other States Through the NAIC

- (a) The Commissioner shall share information and coordinate the Insurance Department's market analysis and examination efforts with other states through the NAIC.

Drafting Note: The NAIC Market Analysis Working Group is the national, confidential forum established by the NAIC to provide regulators with opportunities to share and coordinate the results of their market analysis programs and market conduct actions. States participating in MAWG are expected to conduct their market analysis programs in a manner consistent with guidelines adopted by the NAIC. Adoption of this (or a similar) model law, coupled with expanded participation in MAWG by states, will help foster the goal of domestic deference and other appropriate forms of interstate collaboration, thereby helping to fulfill the goal of making market conduct surveillance a national system of regulation that is more standard and uniform.

Section 16. Additional Duties of the Commissioner

- (a) At least once per year, or more frequently if deemed necessary, the Commissioner shall provide in an appropriate manner to insurers and other entities subject to the scope of (cite Insurance Code citation) information on new laws and regulations, enforcement actions and other information the Commissioner deems pertinent to ensure compliance with market conduct requirements. The failure of the Commissioner to provide any such information shall not be a defense for any insurer that fails to comply with any insurance law of this state. The Commissioner may provide the required notice in an electronic format that is designed to give insurers and other entities adequate notice.
- (b) The Commissioner shall designate a specific person or persons within the Insurance Department whose responsibilities shall include the receipt of information from employees of insurers and licensed entities concerning violations of laws, rules or regulations by employers, as defined in this section. Such person or persons shall be provided with proper training on the handling of such information, which shall be deemed a confidential communication for the purposes of this section.

Drafting Note 1: The provisions of subsection (b) relating to the designation by the Commissioner of an employee to receive "whistleblower" type complaints may be added to an existing whistleblower statute, added as drafted above or omitted.

Drafting Note 2: States that choose to impose additional duties or responsibilities on their own Insurance Commissioners may insert additional subdivisions to this section.

Section 17. Effective Date This Act shall take effect [insert chosen date].

Jim Odiorne

From: kdhuff@regence.com
Sent: Wednesday, March 08, 2006 12:22 PM
To: Jim Odiorne
Cc: nellison@regence.com
Subject: Market Analysis Draft, Sections 1-4

Jim,

Thank you for the opportunity to provide comments on the OIC's efforts to develop a legislative proposal for a Market Conduct Surveillance Model Act. We have had the chance to review sections 1-4 of the Z draft and would like to suggest one change at this time. In Section 4, paragraph 3, we suggest the following change to the definition of "complaint." This added language would specify that, for health companies, grievances must be submitted in writing by a covered person. Thus, this paragraph would read:

"Complaint" means a written or documented oral communication primarily expressing a grievance, meaning an expression of dissatisfaction. For health companies, a grievance is a written complaint submitted by or on behalf of a covered person.

We look forward to working with the OIC to develop a mutually acceptable market conduct proposal. We will continue to provide feedback on future sections of the z draft. In the meantime, if you have any questions, please let me or Nancy Ellison know.

Warm regards,

Kristi

Kristi Huff
Manager, Legislative Affairs
Regence BlueShield
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3/8/2006

Jim Odiorne

From: Carrie Tellefson [carrie_tellefson@yahoo.com]
Sent: Wednesday, March 08, 2006 11:55 AM
To: Jim Odiorne
Cc: john_domeck@progressive.com
Subject: market analysis legislation - comments

Hi Jim,

Progressive's expert on this subject, John Domeck, has been out of the office and just returned. Here are the comments he initially provided related to sections 1 - 4. I will work with him try to clarify and/or suggest alternate language in section 4(17) before next week's meeting. Because session is just now winding down, I haven't had the chance to dig into this in depth.

Section 4(3): Delete the phrase "or documented oral."

Section 4(17): Defintion of "insurance compliance self-evaluative audit document" is excessively broad and appears to encompass everything associated with an audit.

I look forward to participating in the process.

**Regards,
Carrie**

**Carrie Tellefson
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3/8/2006

Jim Odiorne

From: Plack, Scott [plack.s@ghc.org]
Sent: Wednesday, March 08, 2006 11:58 AM
To: Jim Odiorne
Subject: Group Health Comments on Market Assessment Z Draft Sections 1-4

Hi Jim, please find attached Group Health Cooperative's comments on the Z draft, sections 1-4. We appreciate the Commissioner's collegial approach on this project, and look forward to working with your office.

<<OIC- Market Assessment GHC sections 1-4.doc>>

Scott Plack
Director, Regulatory Affairs
Group Health Cooperative
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3/8/2006



521 Wall Street
Seattle, WA 98121

March 8, 2006

Jim Odiorne, Deputy Commissioner
State of Washington
Office of the Insurance Commissioner
P.O. Box 40256
Olympia, WA 98504-0256

VIA E-Mail and U.S. Postal Service

Re: Z Draft of Market Assessment Legislation – Sections One through Four

Dear Mr. Odiorne,

This letter is in response to your request for feedback on sections one through four of Z draft 1053.1/06, a bill related to market regulation and surveillance. Group Health Cooperative (Group Health) appreciates the willingness of the Commissioner to work with carriers on assuring the state has an effective, efficient and fair regulatory oversight process. It is apparent that much of the content of the draft proposal was derived from an NAIC model act on market conduct surveillance. We understand that the NAIC has worked with major carriers as well as other entities, such as the National Council of Insurance Legislators in developing the act, but that some differences of opinion still exist over some content and precise wording of the model act. We further understand that to date only one state has adopted the model act.

The release of the Commissioner's study and draft bill just prior to the legislation session, followed by a very busy legislative session, has not allowed much time to gain a thorough understand of the all the details of the NAIC's market assessment approach or the proposed model act. In general, many of our comments reflect comparisons of the new language with existing law and possible duplication, overlap or conflict the model act may have with existing law. We urge the Commissioner to consider repealing, modifying or cross reference existing law to avoid possible conflict with existing law. The following are our specific comments on sections one thorough four of the Z draft:

Section 1

No comments

Section 2

Group Health has two broad concerns with this section. First, although Section 2 states that the law's purpose is to "*establish* (our emphasis) a framework for the Commissioner's market conduct actions," this section is silent as to how this new law is intended to apply to or interact with current law addressing the Commissioner's market conduct review authority.

A number of current statutes already provide guidance on market conduct and similar examinations. For example, RCW 48.03.010 compels the Commissioner to examine insurers as often as he/she deems advisable and no less than every five years; its companion statute, RCW 48.03.040 provides a detailed roadmap regarding the processing of examination reports. RCW 48.46.120 permits the Commissioner to examine the operations of any HMO as often as the Commissioner deems necessary. RCW 48.46.130 permits the Commissioner to conduct proceedings to determine whether an HMO has engaged in improper market activity (as well as other violations). RCW 48.44.145 allows the Commissioner to examine health care service contractors as often as the Commissioner deems necessary. RCW 48.31.400 authorizes administrative supervision by the Commissioner if on examination the Commissioner makes certain findings regarding the insurer's financial or market activity. (This is not an exhaustive list of current statutes addressing this issue.) Nothing in the purpose section of the proposed market regulation law explains how it will impact or supersede pre-existing statutory authority on market and other administrative examinations conducted by the Commissioner. That ambiguity may well create confusion among covered entities.

Second, through the statutes identified above, the Commissioner is already authorized to engage in the activity addressed in Sections 2(1) and 2(2) of the proposed law. For that reason, these sections, and the proposed language related to these sections, is duplicative. The only new provision identified in Section 2 is 2(3), which is the subsection allowing for coordination and communication of market conduct actions among state insurance regulators. To avoid the creation of duplicative systems with respect to market conduct review, perhaps the proposed law could be narrowed to address only what is covered in Section 2(3), which current law doesn't explicitly address.

Section 3

No comments at this time.

Section 4

Section 4(1): Definition of "Best practices organization." It would be useful to know the names of associations or organizations that currently fit this definition.

Section 4(5): Definition of "Market analysis." As drafted, this definition is broad and somewhat vague. To clarify the scope of this provision for covered entities, we suggest narrowing and clarifying the type of market activity that "Market analysis" will evaluate.

For example, the definition of "Targeted examination" in Section 4(14) identifies the operational areas currently reviewed in market conduct examinations. It would be logical to focus the "Market analysis" contemplated by Section 4(5) on the same operational areas identified in 4(14). That focus would bring more clarity to the law and would give covered entities a better understanding as to what information regarding their market activity may be shared with the insurance departments of other states.

Section 4(6): Definition of "Market action." This definition is broad and vague. Because of the breadth of this definition, it is unclear how this definition impacts current law regarding the Commissioner's authority to initiate investigations, undertake administrative supervision, conduct regular examinations, and impose orders on health carriers and insurers. Are those current authorized activities deemed "Market action," as contemplated by this proposed law, and, if so, will this law supersede or replace procedural provisions already in the law regarding those current authorized Commissioner activities?

Sections 4(14), 4(14)(i), 4(14)(ii): Definitions of "Targeted examination," "Desk examination," and "On-site examination." These three definitions describe activity that the commissioner is already authorized to undertake and routinely conducts in market conduct examinations. Is it the intent of these definitions to capture current practice or is the intent to describe a different type of market conduct examination activity than what is currently conducted?

Section 4(15): Definition of "Third-party model or product." This definition is vague, and arguably could include any third-party contract or any other third-party relationship or arrangement, regardless of size. The words "model" and "product" should be defined, and some materiality threshold should be identified, to make this definition clearer.

We thank you again for the opportunity to provide comments on the Z draft and look forward to working with you office on this project. If you have questions, please feel free to contact me at 206-448-2093.

Sincerely,

Scott Plack, Director
Regulatory Affairs

Jim Odiorne

From: AWHP [AWHP@comcast.net]
Sent: Wednesday, March 08, 2006 12:02 PM
To: Jim Odiorne
Cc: Beth Berendt
Subject: Market Analysis Z-Draft Comments



Jim

Thank you for the opportunity to provide AWHP's initial comments (attached) regarding the OIC's Market Analysis Z-Draft bill. Some of our member healthcare Plans will also be forwarding specific comments regarding Sections 1-4 to you directly.

Please don't hesitate to give me a call (425-396-5375) if I can answer any questions, or if you would like to discuss. We look forward to working with you.

Sydney

Association of Washington Healthcare Plans
Sydney Smith Zvara, Executive Director
7252 Fairway Ave SE
Snoqualmie, WA 98065
425-396-5375 Tel
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AWHP@comcast.net

3/8/2006



The Association of Washington Healthcare Plans

March 8, 2006

Sent via E-Mail & U.S. Postal Service

Jim Odiorne
Deputy Insurance Commissioner
Washington State Office of Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Re: Market Analysis Z-Draft Bill

Dear Jim,

On behalf of AWHP's member healthcare plans, we appreciate the opportunity to comment on the Office of Insurance Commissioner's (OIC's) efforts to develop a legislative proposal for Market Regulation and Surveillance.

As I am sure you can understand, we have been heavily engaged in the demands of the 2006 legislative session, which is scheduled to conclude this week. Coming as it has on the heels of this very busy and intense session, our member plans have had minimal time to review and understand the proposed Market Analysis program. The concept is new for many of our members who are in the process of understanding the underlying NAIC model. Those who are already comfortable with the NAIC model are struggling to understand specific concerns the OIC is seeking to address in its proposed deviations from the national model.

As an initial observation, we are concerned that the proposed draft will not replace existing market conduct examinations but rather will overlay the current structure with yet another process for examining carriers' market practices. From the meeting you hosted last December, several of our members understood that part of this effort was to reform the existing market conduct examination process by focusing on targeted examinations. We do not believe that creating a new additional process is the best way to develop an efficient system for evaluating carriers' performance. As our members gain broader understanding of the proposed legislation, we plan to bring forward our suggestions for eliminating existing requirements that are incompatible with the stated purpose of market analysis. We will likely also have additional questions and comments regarding Sections 1-4 and other sections of the draft. In the interim, some of our members will be forwarding specific comments for your consideration.

In light of the significant impact of the proposed legislation, we encourage your office to take the time needed for all stakeholders to understand its implications and provide you with well-thought out comments and suggestions, rather than rushing the process to support short-term deadlines.

Again, we appreciate the opportunity to work with you and hope these initial comments will be of assistance.

Sincerely,

Sydney Smith Zvara
Executive Director

Jim Odiorne

From: kenton.brine@pciaa.net
Sent: Wednesday, March 08, 2006 9:19 AM
To: Jim Odiorne
Cc: Beth Berendt; sorensen@carneylaw.com
Subject: Fw: Washington Market Regulation Legislation

Jim -

Please see below PCI's comments on the first four sections of the OIC's draft legislation on market analysis, prepared by Don Cleasby, PCI Vice President, Regional Manager and Counsel .. Thank you for hosting the meeting with Sue Stead in February; it was helpful and instructive. We look forward to working with the department to address industry concerns. Please let me know if you need further information on PCI's comments.

Thank you.

Kenton Brine
NW Regional Manager
Property Casualty Insurers Association of America
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360.481.6539
1500 Water Street SW, Ste. 2
Olympia, Washington 98501

----- Forwarded by Kenton Brine/PCI on 03/08/2006 09:12 AM -----

Donald S Cleasby/PCI

To Kenton Brine/PCI@PCI

cc michael.harrold@pciaa.net

03/02/2006 01:52 PM

Subject Washington Market Regulation Legislation

March 2, 2006

Mr. Jim Odiorne
Deputy Commissioner, Market Conduct
Office of the Commissioner of Insurance
Insurance Building
P.O. Box 40255
Olympia, WA 98504

Re: Draft Legislation on Market Regulation and Surveillance

Dear Mr. Odiorne:

3/8/2006

The Property Casualty Insurers Association of America (PCI) appreciates this opportunity to provide the Department with comments on the draft Market Regulation and Surveillance Law. It is our understanding that at this time the Department is soliciting feedback on the draft's first four sections. This letter (email) provides that. In addition, during the Department's February 23 meeting on the draft legislation, the Department solicited comment on matters not addressed in the current draft, but for which interested parties have a desire to see included. This letter also provides PCI feedback on that.

SECTION 1 THROUGH 4 COMMENTS

The PCI offers no comments on Section 1 (SHORT TITLE) or Section 2 (PURPOSE AND LEGISLATIVE INTENT).

The PCI recommends that Section 3 (SCOPE) be replaced. First, no similar provision is found in the NAIC model upon which the draft is based. Second, the scope section appears unnecessary since entities subject to the Act are clearly delineated in the definition section and throughout the text of the remainder of the model.

In place of this Scope section, the PCI endorses the following language: Notwithstanding any other grant of authority to the Commissioner to regulate the business of insurance in this state, market analysis, market conduct actions and market conduct examinations shall be undertaken solely as provided in this Act. Authority not expressly delegated to the Commissioner under this Act shall not be inferred.

This language makes clear that market analysis and regulation is now to be governed strictly and solely by the new standards created by the Act. The purpose of this model is to move market regulation to market analysis that leads to further market regulation activity if merited by the analysis. The language above is needed to assure this result.

The PCI has no comments on the definitions in Section 4 (DEFINITIONS) for "Best practices organization", "Commissioner", "Complaint" (although the health insurers will likely request an additional sentence reading "For health companies, a grievance is a written complaint submitted by or on behalf of a covered person"), "insurer", "market analysis", "market regulation personnel", "national association of insurance commissioners", "NAIC market conduct examiner's handbook", "NAIC market conduct uniform examination procedures", "qualified contract examiner", "targeted examination", "desk examination", and "on-site examination".

We believe additional definitions are needed for "market conduct examination" since that term is used in Section 7 (1) and for "comprehensive examination" since we will comment at a later date the need to distinguish between comprehensive and targeted examinations. Suggested language is as follows:

"Market Conduct Examination" means the examination of the insurance operations of an insurer licensed to do business in this state in order to evaluate compliance with the applicable laws and regulations of this state. A market conduct examination may be either a comprehensive examination or a targeted examination. A market conduct examination is separate and distinct from a financial examination of an insurer performed pursuant to [cite section], but may be conducted at the same time.

"Comprehensive Market Conduct Examination" means a review of one or more lines of business of an insurer domiciled in this state that is not conducted for cause. The term includes a review of rating, tier classification, underwriting, policyholder service, claims, marketing and sales, producer licensing, complaint handling practices, or compliance procedures and policies.

The PCI suggests amendments to all remaining definitions. Specifically,

"Market action" needs to clarify on line 32, page 2 that it is limited to insurers "licensed to do business in this state". Surplus lines carriers are subject to market regulation by their domestic state regulator only. Also, the range of regulatory activities should end with "targeted examinations" rather than simply "examinations".

"NAIC market analysis handbook". The PCI recommends the deletion of this definition. Future comments will explain why the statute should not reference this work product.

"NAIC standard data request". Use of the standard data requests should extend to all market actions and not just examinations. Line 20, page 3 should be amended to read "regulation personnel in a market action, or a successor product".

"Third-party model or product". This definition should be deleted. We will argue in future comments that a law directing the department on how to conduct market analysis and market regulation is not the appropriate vehicle to regulate an insurer's use of third-party models or products.

GENERAL COMMENTS ON AN EFFECTIVE MARKET REGULATION AND SURVEILLANCE LAW

As mentioned, the PCI finds certain provisions essential in order to have a strong law in the area of market regulation and surveillance. Key features we look for are as follows:

1. Move market regulation away from a reliance on comprehensive market conduct exams. To do this, the legislation should limit comprehensive exams to domestic regulators. Nondomestic regulators should only do targeted exams on issues not covered in an exam by a domestic regulator. Moreover, regulators should not go right to examinations. If market analysis reveals that more regulatory activity is needed, an exam should be the last resort. Regulators should use other regulatory activities in the "continuum" (correspondence, interviews, information gathering, interrogatories).
2. Provide insurers with some means short of litigation to challenge decisions of a regulator in market analysis and market regulation activity that are outside statutory authority. If the regulator is acting outside of this authority, there should be a means to challenge this outside of the courts. Otherwise, the regulator gets to be the prosecutor, judge and jury. What we have advocated is an arbitration process that can take place when an exam is called (to challenge the reasons given to do the exam) or before the final report is issued (to challenge any processes used by or conclusions reached by the regulator that don't conform to the law).
3. We need strong confidentiality language. If sensitive, trade secret information is provided to the Department and the Department shares that information with others (law enforcement, NAIC, other departments), the others must both enter an agreement to hold the information as confidential AND have the legal authority to maintain it as confidential. Otherwise, a legal challenge could force release of the information. And disclosing information to the Department should not be a waiver of any privilege.
4. There needs to be some avenue to challenge cart blanche acceptance of NAIC work product. If the NAIC changes a referenced work product, it should not automatically become law in a state, done in the absence any legislative review and debate.
5. Costs must be contained to justified levels, particularly if contract examiners are used.
6. The statute must be worded to force a change to market analysis and then market regulatory activity based on that analysis which is most appropriate for the insurer's conduct. This should not be left discretionary on the Commissioner's part, thus allowing the status quo to continue.
7. Finally, information on which market analysis is based and upon which a regulator determines that further market regulation activity is needed should be verified to remove errors.

Some of these principles are addressed in the current draft, others are not. The PCI would like the opportunity to address at some point those that are not.

Thank you for your consideration of these comments. Feel free to contact either Kenton Brine (360-481-6539) or Don Cleasby (847-553-3671) should you have any questions on these comments.

Don Cleasby
Vice President, Regional Manager and Counsel
Direct Phone: 847-553-3671
donald.cleasby@pciaa.net

Property Casualty Insurers Association of America

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3/8/2006



Fax Cover Sheet

Date 3-8-06Number of pages 4 (including cover page)To: Jim Odiorne

From:

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Comments Per Conversation with
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March 8, 2006

The Honorable Mike Kreidler
Insurance Commissioner
State of Washington
5000 Capitol Way
Tumwater, Washington 98501

Re: Comments on Market Conduct Surveillance Model Act
Sections 1 – 4 of Z draft

Dear Commissioner Kreidler,

On behalf of the State Farm Insurance Companies, I am pleased to submit the following comments with respect to the proposed draft legislation ("Z Draft") which has been distributed by your staff. In offering these comments, I do so having served the California State Assembly as its Chief Committee Counsel on Finance and Insurance, and thus as one particularly familiar with problems of both statutory drafting, and interpretation.

Section 1

With respect to Section 1 of the proposed draft, inasmuch as the measure you are bringing forward is patterned upon the NAIC's Market Conduct Surveillance Law, I recommend that you retain the descriptor "Conduct" in the title of this proposed legislation.

It is a common "canon" of statutory interpretation that titles, while they do not control meaning, may nevertheless be consulted to remove doubt or obscurity. In the case of the NAIC Law, its varied new provisions and enumerated powers, included the power to examine markets, has as its object the regulation of insurer conduct. This is the clear thrust of the law and it is a purpose that accords well with your duties pursuant to RCW 48.02.060.

I suggest that in the matter of its formal title, the Z Draft should be amended to conform to the NAIC title, "Market Conduct Surveillance Law".

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Section 2

Consistent with the comment with respect to Section 1, so as to ensure that the new statute is understood to be similar in intent and scope to the NAIC Model Law on which it is significant part relies, I advise that the term “conduct” be reinserted in paragraphs (1) and (2) of Section 2 as follows:

(1) Processes and systems for identifying, assessing, and prioritizing market conduct problems that have a substantial adverse impact on consumers, policyholders, and claimants;

(2) Market conduct actions by a commissioner to substantiate such market conduct problems and a means to remedy significant market conduct problems; and

Sections 3 and 4

On behalf of the State Farm Insurance Companies, I am familiar with the comments offered on behalf of AHIP and reflecting the Industry Revised Model recommendations. I concur with those suggested changes.

Commentary on More General Matters

In the general effort to evolve more cost-effective and efficacious market conduct tools, certain basic issues remain of fundamental importance and will, it is to be expected, figure in the discussion of the soundness of the proposed legislation as its examination moves forward in this process. Those issues include:

1. **Confidentiality:** Issues here concern the statutory basis for providing assurances of confidentiality both as to insurer and regulator communications generally, but also as an essential element of the self-audit process. In the evolving framework, this issue extends as well to assurances from the NAIC and other jurisdictions, inasmuch as joint efforts are undertaken.
2. **Data Quality:** The new market analysis tool kit is built upon analogies to the traditionally concrete and verifiable financial analysis data model, but contemplate wide-ranging efforts to glean insights from the “market”. Stakeholders, ranging from insurers who will be both the object of examination and the funders, and the public fisc, whose costs incurred should be confined to credible, well-founded regulatory efforts, all have a common ground in the need for regulatory tools that make use of

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high quality, credible information. Unless there is an assurance that the data being relied upon is credible and verifiable, the resulting “insights” cannot be assumed to be sound and capable of withstanding critical scrutiny.

3. **Departmental Budgetary Implications:** Review of the Washington Department of Insurance Analysis and recommendations provided by Ms. Sue Stead makes it appear that implementation will require additional – and perhaps significantly increased – staffing levels, training and other resources. In general, State Farm anticipates that this will be a concern to the industry generally in the State of Washington.

There are an array of other matters which I understand are being identified by AHIP at this time as matters of concern to be raised over the course of the Washington Market Analysis Process. While I have not chosen to enumerate each such item, I am familiar with the array of topics and share the general thrust of those concerns.

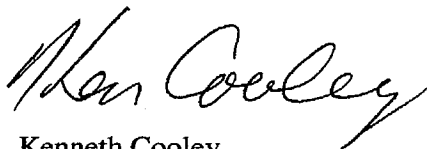
Thank you for the opportunity to provide comment.

As I discussed with Jim Odiorne this week in Orlando, I am traveling on business for the next week and will be making Olympia my last stop so as to participate in March 15th meeting.

If you have any comments or questions I can be reached via email at Ken.Cooley.cxix@statefarm.com or via cell phone at 916.705.3674.

Thank you for your interest.

Sincerely,



Kenneth Cooley
Counsel